

No. 13009

United States
Court of Appeals
For the Ninth Circuit.

GEORGE GARDNER, as Trustee in Bankruptcy
for the Estate of Ruth Vena Johnson, Also
Known as Ruth Boyce, Bankrupt,

Appellant,

vs.

RUTH VENA JOHNSON, Also Known as Ruth
Boyce,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

No. 13009

United States
Court of Appeals
For the Ninth Circuit.

GEORGE GARDNER, as Trustee in Bankruptcy
for the Estate of Ruth Vena Johnson, Also
Known as Ruth Boyce, Bankrupt,

Appellant,

vs.

RUTH VENA JOHNSON, Also Known as Ruth
Boyce,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit of Service by Mail.....	90
Affidavit of Service on Walter G. Johnson and Ruth Vena Johnson.....	35
Amended Complaint to Avoid Fraudulent Con- veyances of Real Property.....	92
Answers of the Defendants to the Amended Complaint	100
Appeal:	
Appellant's Supplemental Designation of Parts of the Record on.....	89
Designation of Parts of the Record on (U.S.D.C.)	86
Notice of.....	82
Points on Which Appellant Intends to Rely on	83
Appellant's Supplemental Designation of Parts of the Record on Appeal.....	89
Application for an Extension of Time to File Answer, etc.....	37
Bond of Trustee.....	10

INDEX	PAGE
Certificate of Clerk.....	118
Claim to Homestead Exemption, etc.....	40
Debtor's Petition.....	3
Schedule B-1—Bankrupt's Schedules in Bankruptcy, Real Estate.....	5
B-4—Property in Reversion, Re- mainder, Trust and Ex- pectancy	5
B-5—Property Claimed Exempt..	7
B-6—Books, Deeds and Papers, Oath to Schedule B.....	7
Designation of Parts of the Record on Appeal (U.S.D.C.)	86
Findings of Fact and Conclusions of Law Cause No. 7723-B.....	104
Findings of Fact and Conclusions of Law and Order Reversing Referee's Order Cause No. 44,916-Y	72
Homestead Exemption, Claim.....	43
Judgment Cause No. 7723 WM.....	113
Mandate	116
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	82
Opinion	61

INDEX	PAGE
Orders of Adjudication and of General Reference	9
Order Authorizing Service of Process by Private Citizen.....	35
Order Continuing Hearing on Order to Show Cause in Re Certain Real Property.....	42
Order Extending Time Within Which to File Petition for Review of Order Quieting Title to Real Property.....	55
Order Quieting Title to Real Property.....	44
Order to Show Cause.....	29
Petition for Order to Show Cause Quieting Title to Real Property.....	21
Petition for Order Extending Time to File Petition for Review of Order for Sale of Property and Disallowing Claim for Homestead Exemption	54
Petition for Review.....	56
Points on Which Appellant Intends to Rely on Appeal	83
Points on Which Appellant Intends to Rely and Designation of Parts of the Record to Be Printed (U.S.C.A.).....	120
Referee's Certificate on Petitions for Review of Order Quieting Title to Real Property.....	13
Supplement to Referee's Certificate on Petitions for Review, etc.....	59

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

THOMAS S. TOBIN,
817, 111 West 7th St.,
Los Angeles 14, Calif.

For Appellee:

JOSEPH MAYER,
450 N. Beverly Dr.,
Beverly Hills, Calif.

In the District Court of the United States for the
Southern District of California, Central Division

In Bankruptcy No. 44916-Y

In the Matter of

RUTH VENA JOHNSON, sometimes known as
RUTH BOYCE,

Bankrupt.

DEBTOR'S PETITION

Form No. 1

To the Honorable Judge of the District Court of
the United States for the Southern District
of California.

The Petition of Ruth Vena Johnson, sometimes known as Ruth Boyce, Residing at No. 701 Grammercy Drive, in Los Angeles, County of Los Angeles, State of California, by occupation a Realtor, and employed by Self, respectfully represents:

1. Your petitioner has had his principal place of business (or has resided, or has had his domicile) at above address within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Sched-

ule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner.

/s/ MILTON M. COHEN,
Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

I, Ruth Vena Johnson, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner.

Subscribed and sworn to before me this 23rd day of April, 1947.

[Seal] /s/ MILTON M. COHEN,
Notary Public. [2*]

Schedule B

Statement of All Property of Bankrupt

Schedule B-1—Real Estate

Location and Description of all Real Estate owned by Debtor, or held by him, whether under deed, lease or contract.—Incumbrances thereon, if any, and dates thereof.	Estimated value of Debtor's Interest	
	Dollars	Cents
—Statement of particulars relating thereto.		

None.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner. [27]

Schedule B-4

Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

(N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's in-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

terest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

GENERAL INTEREST	PARTICULAR DESCRIPTION	Estimated Value of Interest
		Dollars Cents
Interest in Land	None.	
Personal Property	None.	
Property in Money, Stock, Shares, Bonds, Annuities, etc.,	None.	
Rights and Powers, Legacies and Be- quests	None.	
Property heretofore conveyed for benefit of creditors		
Portion of debtor's property conveyed by deed of assignment or other- wise, for the benefit of creditors; date of such deed, name and ad- dress of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.	Amount realized as proceeds of property conveyed	
Attorneys Fees.	None.	

Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

None.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner. [32]

Schedule B-5

Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.)

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.	Valuation	
	Dollars	Cents

None.

Property claimed to be exempt by State laws, with reference to the statute creating the exemption.

None.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner. [33]

Schedule B-6

Books, Papers, Deeds and Writing relating to Debtor's Business and Estate

The following is a true list of all books, papers,

deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody, or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books

Dollars Cents

None.

Deeds

None.

Papers

None.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner.

Oath to Schedule B

State of California,

County of Los Angeles—ss.

I, Ruth Vena Johnson, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with

the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

/s/ RUTH VENA JOHNSON
BOYCE,
Petitioner.

Subscribed and sworn to before me this 23rd day of April, 1947.

[Seal] /s/ MILTON M. COHEN, JR.,
Notary Public.

[Endorsed]: Filed April 24, 1947. [34]

United States District Court
Southern District of California

ORDERS OF ADJUDICATION AND
OF GENERAL REFERENCE

At Los Angeles, in said District, on April 24, 1947.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings

be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings herein-after mentioned, to take such further proceedings therein as are required and permitted by said Act and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number: 44,916-Y.

Title of Proceedings: RUTH VENA
JOHNSON, aka RUTH BOYCE.

Filed: 4/24/47.

Referee: Benno M. Brink, Esq.,
Los Angeles, Calif.

PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed April 24, 1947. [35]

[Title of District Court and Cause.]

No. 44,916-Y

BOND OF TRUSTEE

Know All Men By These Presents: That we George Gardner, of Los Angeles, California, as principal, and J. C. Keenan, of Los Angeles, California, and James A. A. Smith, of Los Angeles,

California, as sureties, are held and firmly bound unto the United States of America in the sum of One Hundred & no/100 (\$100.00) Dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and Sealed this 12th day of May, A.D. 1947.

The Condition of this obligation is such, that whereas the above-named George Gardner, was, on the 12th day of May, A.D. 1947, appointed trustee in the case pending in bankruptcy in said court, wherein Ruth Vena Johnson, also known as Ruth Boyce, is the bankrupt, and he, the said George Gardner, has accepted said trust with all the duties and obligations pertaining thereto:

Now, Therefore, if the said George Gardner, trustee as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then

this obligation to be void; otherwise to remain in full force and virtue.

Signed and Sealed in presence of:

[Seal] /s/ GEORGE GARDNER.

[Seal] /s/ J. C. KEENAN.

[Seal] /s/ JAMES A. A. SMITH.

We, the sureties in the above bond, on oath depose and say, that we have property in our own name, above liabilities and exemptions, to exceed the amount of this bond.

Examined and recommended for Approval as provided in Rule 13.

/s/ J. C. KEENAN,

/s/ JAMES A. A. SMITH.

Subscribed and Sworn to before me this 13th day of May, A.D. 1947.

[Seal] /s/ E. B. BOWMAN,

Notary Public.

I do hereby certify that I have made personal investigation of the financial resources of the sureties and that I am satisfied that the within bond is sufficient and proper for the purposes for which it is given.

Date: May 12th, 1947.

/s/ GEORGE GARDNER.

Approved this 13th day of May, 1947.

/s/ BENNO M. BRINK,

Referee.

[Endorsed]: Filed May 13, 1947. [36]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

REFEREE'S CERTIFICATE ON PETITIONS
FOR REVIEW OF ORDER QUIETING
TITLE TO REAL PROPERTY

To the Honorable Leon R. Yankwich, Judge of the
Above-Entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of the said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby certify to the following:

On February 14, 1951, your Referee made his order [37] in this matter in which he decreed that George Gardner, the trustee in bankruptcy herein, was the owner of certain real property, in said order described, free and clear of any right, title, interest, lien or claim against the same, asserted by any of the respondents named in the said order, save and except a lien in the sum of \$67.00 held by the Bank of America National Trust and Savings Association.

Ruth Vena Johnson, aka Ruth Boyce, the bankrupt herein, and Harry V. Mooney, a creditor in this matter, two of the aforesaid respondents, have duly filed herein their separate petitions for the review of the said order.

The Proceedings

On April 24, 1947, the said bankrupt filed in this

matter her voluntary petition in bankruptcy and an order of adjudication was made thereon on the same day.

On November 9, 1950, the aforesaid trustee in bankruptcy filed herein his petition for an order to show cause to quiet title to the real property hereinbefore mentioned. On the same day an order to show cause was issued on the said petition and the same was set for hearing on December 14, 1950.

On November 28, 1950, the aforesaid Harry V. Mooney filed his answer to the said petition and order to show cause, in which he alleged that he held a lien upon the property here involved pursuant to an abstract of a judgment which he had caused to be recorded on October 17, 1945. The trustee herein, through his counsel, conceded that the said abstract of judgment had been so recorded, but he asserted that the lien of the said judgment had expired on October 18, 1950.

On December 11, 1950, the bankrupt filed in this [38] matter an instrument captioned "Claim to Homestead Exemption: In Real Property, Under Section #1260 and Section #1261 B.-C of the Civil Code Statute of the California Law," in which she alleged, among other things, that she was "entitled to her homestead exemption filed on November 18, 1944," on the property here in question. On January 6, 1951, the bankrupt filed a further instrument captioned "Homestead Exemption, Claim," in which she asserted a homestead exemption claim on the property here involved, under the aforesaid homestead declaration filed on No-

vember 18, 1944. In her bankruptcy schedules which the bankrupt filed in this matter on April 24, 1947, she did not schedule the property here involved, as an asset, nor did she claim the same as exempt under her declaration of homestead. Counsel for the trustee admitted that the bankrupt had recorded the declaration of homestead upon the property here in question, prior to the commencement of this bankruptcy proceeding, but he asserted that her claim of homestead was no longer of any force or effect by reason of the fact that she had failed to claim the said property as exempt as a homestead in this proceeding, and by reason of the further fact that prior to this bankruptcy proceeding she had made a fraudulent conveyance of the said property, which conveyance was set aside in an action instituted by the trustee in bankruptcy herein, against the bankrupt and others, and in which action the alleged homestead rights of the bankrupt were neither pleaded nor claimed by the bankrupt or by any other party in interest in the action.

The aforesaid petition filed by the trustee in bankruptcy herein on November 9, 1950, and the order to show cause issued thereon, were on your Referee's calendar [39] on December 14, 1950, January 25, 1951, and February 6, 1951. Thereafter, on February 14, 1951, your Referee signed and filed his Order Quieting Title to Real Property in this matter, in which he ruled in favor of the trustee and against the aforesaid petitioners on review on their respective contentions in this case. It is

from the said order that the reviews herein certified are taken.

The Questions Presented

The sole question presented by the petition for review filed herein by the said Harry V. Mooney is this:

Did the judgment lien held by the said Harry V. Mooney, on the property here in question, expire on October 18, 1950?

The only question presented by the petition for review filed herein by the bankrupt in this matter is the following:

Does the bankrupt have a right of homestead in and to the property here involved, which is valid and enforceable against the trustee in bankruptcy in this proceeding?

The Evidence

The facts relating to the question presented by the petition for review filed herein by the said Harry V. Mooney are as follows:

The said Harry V. Mooney caused an abstract of his judgment against the bankrupt to be recorded on October 17, 1945.

This bankruptcy proceeding began on April 24, 1947.

On November 17, 1948, your Referee made an order denying the bankrupt a discharge in this proceeding. [40] On January 27, 1949, the bankrupt filed herein an "appeal" for the review of the said order denying discharge. On

September 13, 1949, your Referee filed with the Clerk of the Court his certificate on the review of the said order denying discharge. The matter of the said review is still pending.

The time for filing claims expired in this case on November 12, 1947. On November 10, 1947, the said Harry V. Mooney filed his claim in this matter for \$10,871.64 plus interest, based upon a judgment recovered by him against the bankrupt herein. (The said claim is now on file as Plaintiff's Exhibit No. 5 in Civil Proceeding No. 7723-WM in this Court, in which proceeding George Gardner, etc., is plaintiff and Gladys Venes and others are defendants. There appears to be no reference in the said claim to any security held by the claimant).

The facts relating to the question presented by the petition for review filed herein by the bankrupt are as follows:

Prior to the commencement of this bankruptcy proceeding, the bankrupt recorded her declaration of homestead upon the real property here involved.

On October 28, 1947, the trustee in bankruptcy herein filed a complaint against the bankrupt and others, with respect to the real property here involved, in Civil Proceeding No. 7723-WM in the United States District Court for the Southern District of California. The title of the said proceeding is "George Gardner, etc., Plaintiff, v. Gladys Venes, et al., Defend-

ants.” The bankrupt appeared in the said action, but her homestead rights in or to the said [41] property were neither pleaded nor claimed by her or by any other party in the proceeding.

On February 10, 1949, a judgment was entered in the said proceeding, in which it was decreed that certain transfers made of the said property by the bankrupt, on December 2, 1944, and December 14, 1944, were fraudulent and void and that the trustee in bankruptcy herein was the owner of the said property. The said judgment was affirmed on an appeal taken therefrom by the bankrupt and it is now final.

REFEREE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Your Referee's findings of fact and conclusions of law in this matter are incorporated in your Referee's Order Quieting Title to Real Property, the original of which is going up with this certificate.

Papers Submitted

The following papers are herewith transmitted:

- (1) Petition for Order to Show Cause Quieting Title to Real Property, filed November 9, 1950.
- (2) Order to Show Cause, filed November 9, 1950.
- (3) Order Authorizing Service of Process by Private Citizen, filed November 17, 1950.

(4) Answer to Order to Show Cause, filed by Harry V. Mooney on Nov. 28, 1950.

(5) Affidavit of Service on Walter G. Johnson and Ruth Vena Johnson, filed Dec. 7, 1950.

(6) Application for Extension of Time, etc., filed Dec. 9, 1950.

(7) Claim to Homestead Exemption, etc., filed Dec. 11, 1950.

(8) Order Continuing Hearing, etc., filed Dec. 14, 1950.

(9) Homestead Exemption Claim, filed Jan. 6, 1951. [42]

(10) Order Quieting Title to Real Property, filed Feb. 14, 1951.

(11) Petition for Order Extending Time, etc., filed Feb. 23, 1951.

(12) Order Extending Time, etc., filed Feb. 23, 1951.

(13) Order Extending Time, filed Feb. 24, 1951.

(14) Petition for Review, filed by Harry V. Mooney on March 20, 1951.

(15) Petition for Review by Ruth Vena Johnson, etc., filed March 22, 1951.

The following instruments, now on file in Civil Proceeding No. 7723-WM, in the Office of the Clerk of the United States District Court for the Southern District of California, were received in

evidence by reference as Trustee's Exhibits Nos. 1 to 9, in the following order, to wit:

Trustee's Exhibits:

- (1) Complaint filed Oct. 28, 1947.
- (2) Answer of Defendants Gladys Venes and Ruth Vena Johnson, filed Dec. 29, 1947.
- (3) Stipulation dated Jan. 16, 1948, filed Jan. 17, 1947.
- (4) Order Approving Stipulation and Appointing Guardian ad litem, dated Jan. 16, 1948. Filed Jan. 17, 1947.
- (5) Amended Complaint, filed Jan. 21, 1948.
- (6) Answer of Defendants, filed Feb. 10, 1948.
- (7) Findings of Fact and Conclusions of Law, filed Feb. 10, 1949.
- (8) Judgment, filed Feb. 10, 1949.
- (9) Mandate, filed Apr. 19, 1950.

The aforesaid proceeding No. 7723-WM is entitled "George Gardner, etc., Plaintiff, v. Gladys Venes, et al., Defendants."

Respectfully submitted this 5th day of April, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy. [43]

[Endorsed]: Filed April 5, 1951. U.S.D.C.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

PETITION FOR ORDER TO SHOW CAUSE
QUIETING TITLE TO REAL PROPERTY

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Comes now your petitioner, George Gardner, and
respectfully shows the Referee:

I.

That he is the duly appointed, qualified and acting
Trustee in bankruptcy herein.

II.

That on or about December 2, 1944, the bankrupt, Ruth Vena Johnson, also known as Ruth Boyce, made a fraudulent conveyance of certain real property situated in the City of Los Angeles, County of Los Angeles and State of California, and described as:

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of [44] the County Recorder of said County,

to her daughter, Gladys Venes, and her daughter's children, as their separate property, which deed was recorded in Book 21,600, Page 211, of Official Records.

III.

That said real property was not scheduled in the bankrupt's schedules, nor was any attempt made to claim the same as exempt, and the existence of the same and of the bankrupt's transfer of the same was concealed from your petitioner as Trustee in bankruptcy until he and his counsel, Thomas S. Tobin, through independent investigation learned of said transfer.

IV.

That thereafter, on October 28, 1947, your petitioner instituted an action in the United States District Court for the Southern District of California, Central Division, being Action No. 7723 Civil, against the bankrupt, her daughter, Gladys Venes, and the minor children of the said Gladys Venes; that counsel were engaged by the said Ruth Vena Johnson to represent all of the defendants; that a stipulation was entered into between counsel for the Trustee and Rupert B. Turnbull, Esq., the then attorney for the defendants, consenting to an order being made by Honorable Leon B. Yankwich, United States District Judge, appointing Gladys Venes as guardian ad litem for the minor children; that an answer was duly filed on behalf of all defendants in said action, the matter tried, and on February 10, 1949, the decree was entered by Honorable William C. Mathes, United States District Judge, before whom said action was tried, decreeing said transfer to be fraudulent and void as to creditors of the bankrupt herein, and as to

her Trustee, and setting the same aside; that thereafter, an appeal was taken by the defendants to the United States Court of Appeals for the Ninth Circuit, and the District Court's judgment was affirmed, and thereafter a petition for writ of certiorari was filed in the [45] United States Supreme Court by said defendants and was denied and said decree has long since become final.

V.

That your petitioner is in actual and constructive possession of said real property, having taken over the same immediately after the entry of the judgment of the District Court on February 10, 1949, and that your petitioner is renting said real property to a tenant on a month to month basis and collecting the rents each month for the benefit of this bankrupt estate.

VI.

That a search of the title by the Title Insurance and Trust Company reveals numerous clouds on the title to said real property due to the bankrupt's frantic attempts to conceal the same and to defraud her creditors, also due to numerous judgments against the bankrupt obtained by various creditors, abstracts of which have been filed for record.

VII.

That before your petitioner can sell said property and give a clear title thereto, it will be necessary that title be quieted against the holders of various

purported conveyances and various purported liens of record against said real property, all of which are inferior to the right, title and interest of the Trustees herein, in and to said real property.

VIII.

That the following persons, firms, copartnerships or corporations claim some right, title, interest, lien or claim in and to the real property hereinbefore described, but that all of said rights, titles, interests, liens, or claims are inferior to the right, title and interest of your petitioner as Trustee in bankruptcy, and that your petitioner, as such Trustee in bankruptcy, is vested with title to said real property as of the date of the filing of the petition, as property transferred by the bankrupt in [46] fraud of her creditors, and property which prior to the filing of the petition she could by any means have transferred or which might and is now vested with the fee ownership to said real property; have been levied upon or sold under judicial process against her, that said real property constitutes property recovered by your petitioner as Trustee in bankruptcy in which the said Ruth Vena Johnson, also known as Ruth Boyce, could not claim an exemption under Section 6 of the National Bankruptcy Act, and that said bankrupt had no time during these proceedings asserted a claim of exemption to said real property:

1. Ruth Vena Johnson.
2. Vena Ruth Johnson,

also known as Ven Ruth Johnson
also known as Vera Ruth Johnson
also known as Ruth V. Johnson
also known as Ruth Johnson
also known as Vena Johnson
also known as Verna Ruth Johnson
also known as Ruth Boyce
also known as Ruth Boyce, doing business
as Boyce Realty Co.
also known as Ruth V. Boyce
also known as Mrs. Ruth Boyce
also known as Vena Crooke
also known as Louise Crooks
also known as Louise Crooks, doing business
as Hollywood Real Estate School
also known as Ruth Rosen
also known as Ruth Venas
also known as Gladys Venes
also known as Gladys Goldman
also known as Mrs. Ralph Gordon

(The foregoing are aliases under
which the bankrupt [47] operated).

3. Boyce Realty Company, a corporation.
Boyce Realty Co., a fictitious firm name and
style used by Ruth Vena Johnson, also
known as Ruth Boyce.
Boyce Realty Co., a copartnership consist-
ing of Ruth Vena Johnson, and an un-
known partner or partners.
Hollywood Real Estate School, owned and
operated by the bankrupt as Louise
Crooks.

4. Johnson Realty Company.
5. Walter Johnson, also known as Walter G. Johnson, also known as Walter George Johnson.
6. Gladys Venes and John Doe Venes, her husband, whose true name is unknown to the Trustee.
7. Frank Venes, Jr., a minor.
8. Ruth Venes, a minor.
9. Mary Jane Venes, a minor.
10. Judith Venes, a minor.
11. John Doe Venes, a minor.
12. Jane Doe Venes, a minor.

(The last two named as Does because the Trustee is informed that another child has been born to Gladys Venes of Scotch Plains, New Jersey, since the institution of the proceeding to set aside the bankrupt's fraudulent transfer).

13. Harry V. Mooney and Jane Doe Mooney, his wife, whose true name is unknown to the Trustee.
14. Retailers Credit Association of San Francisco.
15. The Assignor of the claim on which the judgment of the Retailers Credit Association of San Francisco was based. [48]
16. Bank of America National Trust and Savings Association, a national banking association.

17. Royal Howard and Royal Howard, doing business as Research Clearing House.
18. Robert Rowe.
19. Department of Employment of the State of California.
20. State of California.
21. Union Bank & Trust Company of Los Angeles, a corporation.
22. Roy P. Schoettler and Roy P. Schoettler, doing business as Pacific Coast Claim Adjusters.
23. Jane Doe Schoettler, wife of Roy P. Schoettler, true name unknown.
24. M. F. Bowler, Jr., Trustee under deed of trust in favor of Farmers and Merchants National Bank of Los Angeles.
25. The Farmers and Merchants National Bank of Los Angeles, a corporation.
26. Charles E. Gillstrom and Jane Doe Gillstrom, his wife, whose true name is to the Trustee unknown.
21. H. Morrow, and Jane Doe Morrow, his wife, whose true name is to the Trustee unknown.
22. Title Insurance and Trust Company, a corporation, as Trustee under deed of trust in favor of Lee Combs and Wallace B. Scales.
23. Lee Combs and Jane Doe Combs, his wife, whose name is to the Trustee unknown.
24. Wallace B. Scales and Jane Doe Scales,

his wife, whose true name is to the Trustee unknown.

25. City of Los Angeles, a municipal corporation.
26. Department of Water and Power of the City of Los Angeles. [49]
27. The United States of America, claimant of tax lien.

IX.

That your petitioner is informed that the bankrupt recorded a declaration of homestead on said real property on November 18, 1944, before she transferred said real property to her daughter, Gladys Venes and her children, which declaration of homestead was recorded in Book 21478, Page 52, Official Records, and that thereafter on January 29, 1946, there was recorded a declaration of homestead in favor of Gladys Venes, married, dated January 29, 1946, in Book 22,775, at Page 152, at which time Gladys Venes was not a resident of the State of California, but was a resident of Scotch Plains, New Jersey; that both of said homestead declarations are null and void and of no force and effect, that of the bankrupt being nullified by her alienation of the property, and that of Gladys Venes being fraudulent for the reason that the said Gladys Venes was not living on said property at the time of the filing of said declaration of homestead.

Wherefore, the Trustee prays that an order issue decreeing that none of the persons, firms, copartnerships, associations or corporations hereinbefore

named have any right, title, interest, lien or claim in and to said real property superior to that of your petitioner as Trustee in bankruptcy; that this Court enter an order appointing a guardian ad litem for the minor defendants, Frank Venes, Jr., Ruth Venes, Mary Jane Venes, Judith Venes, John Doe Venes and Jane Doe Venes, to represent them in this matter; that the Trustee be decreed to have a clear title to said real property; that the attempted declarations of homestead on said real property by the bankrupt, Ruth Vena Johnson, and her daughter, Gladys Venes, be decreed to be void as against the Trustee herein, and that the Trustee be given such other and further relief as the Court may deem just and equitable in the premises.

/s/ GEORGE GARDNER,
Trustee in Bankruptcy.

/s/ THOMAS S. TOBIN,
Attorney for Trustee.

Duly verified.

[Endorsed]: Filed November 9, 1950. [50] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

ORDER TO SHOW CAUSE

Upon reading and filing the verified petition of George Gardner, the Trustee in Bankruptcy herein,

and it appearing to the Referee from said petition that the Trustee is in possession of certain real property therein described, with numerous clouds on the title as described in said petition, which must of necessity be cleared or disposed of before the Trustee can sell said real property, now on motion of Thomas S. Tobin, attorney for the Trustee, it is

Ordered that the following persons, firms, corporations, copartnerships, associations and other respondents named in the Trustee's petition, as follows:

Ruth Vena Johnson

Vena Ruth Johnson

also known as Ven Ruth Johnson

also known as Vera Ruth Johnson

also known as Ruth V. Johnson [52]

also known as Ruth Johnson

also known as Vena Johnson

also known as Verna Ruth Johnson

also known as Ruth Boyce

also known as Ruth Boyce, doing business as
Boyce Realty Co.

also known as Mrs. Ruth Boyce

also known as Vena Crooke

also known as Louise Crooks

also known as Louise Crooks, doing business as
Hollywood Real Estate School

also known as Ruth Rosen

also known as Ruth Venas

also known as Gladys Venes

also known as Gladys Goldman

also known as Mrs. Ralph Gordon.

(The foregoing are aliases under which the bankrupt operated.)

Boyce Realty Company, a corporation.

Boyce Realty Co., a fictitious firm name and style used by Ruth Vena Johnson, also known as Ruth Boyce.

Boyce Realty Co., a copartnership consisting of Ruth Vena Johnson, an unknown partner or partners.

Hollywood Real Estate School, owned and operated by the bankrupt as Louise Crooks.

Johnson Realty Company.

Walter Johnson, also known as Walter G. Johnson, also known as Walter George Johnson.

Gladys Venes and John Doe Venes, her husband, whose true name is unknown to the Trustee.

Frank Venes, Jr., a minor. [53]

Ruth Venes, a minor.

Mary Jane Venes, a minor.

Judith Venes, a minor.

John Doe Venes, a minor.

Jane Doe Venes, a minor.

(The last two named as Does because the Trustee is informed that another child has been born to Gladys Venes of Scotch Plains, New Jersey, since the institution of the proceeding to set aside the bankrupt's fraudulent transfer.)

Harry V. Mooney and Jane Doe Mooney, his wife, whose true name is unknown to the Trustee.

Retailers Credit Association of San Francisco.
The Assignor of the claim on which the judgment of the Retailers Credit Association of San Francisco was based.

Bank of America National Trust and Savings Association, a national banking association.

Royal Howard and Royal Howard, doing business as Research Clearing House.

Robert Rowe.

Department of Employment of the State of California.

State of California.

Union Bank & Trust Company of Los Angeles, a corporation.

Roy P. Schoettler and Roy P. Schoettler, doing business as Pacific Coast Claim Adjusters.

Jane Doe Schoettler, wife of Roy P. Schoettler, true name unknown.

M. F. Bowler, Jr., Trustee under deed of trust in favor of Farmers and Merchants National Bank of Los Angeles.

The Farmers and Merchants National Bank of Los Angeles, a corporation. [54]

The United States of America, claimant of tax lien.

Charles E. Gillstrom and Jane Doe Gillstrom, his wife, whose true name is to the Trustee unknown.

H. Morrow and Jane Doe Morrow, his wife,
whose true name is to the Trustee unknown.

Title Insurance and Trust Company, a corporation,
as Trustee under deed of trust in favor
of Lee Combs and Wallace B. Scales.

Lee Combs and Jane Doe Combs, his wife,
whose name is to the Trustee unknown.

Wallace B. Scales and Jane Doe Scales, his
wife, whose true name is to the Trustee unknown.

City of Los Angeles, a municipal corporation.
Department of Water and Power of the City
of Los Angeles,

appear and show cause before the undersigned
Referee in bankruptcy at his courtroom in the
Federal Building, Los Angeles, California, on the
14th day of December, 1950, at the hour of 10:00
o'clock in the forenoon on said date, and then and
there establish any right, title, interest, lien or claim
in their favor to real property situated within the
County of Los Angeles and State of California,
described as:

Lot 4 in Block 29 of Tract No. 7555, in the
City of Los Angeles, County of Los Angeles
and State of California, as per map recorded
in Book 88, Pages 79 to 84, inclusive, of Maps,
in the office of the County Recorder of said
County,

and show cause why the Trustee should not be
decreed to be the owner of said real property free
and clear of any right, title, interest, lien, claim,

or homestead right therein, and why the Trustee should not be authorized to sell said real property for the benefit of the bankrupt estate.

It Is Further Ordered, that any of the respondents seeking [55] recognition of any right, title, interest, lien or claim in their favor against said real property, file their answer in writing with this Court, asserting their right, title, interest, lien or claim thereto at least five (5) days prior to the date of hearing thereon.

It Is Further Ordered that personal service be made on the minor respondents, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes, Judith Venes, John Doe Venes and Jane Doe Venes in the State of New Jersey, or wherever they may be residing, and that personal service be made if possible on the bankrupt, Ruth Vena Johnson, also known as Ruth Boyce, and Walter Johnson, also known as Walter G. Johnson, also known as Walter George Johnson, and that otherwise services may be made on respondents herein by mail.

Done at Los Angeles, in the Southern District of California, this 9th day of November, 1950.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

Received November 9, 1950.

[Endorsed]: Filed November 9, 1950. [56] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

ORDER AUTHORIZING SERVICE OF
PROCESS BY PRIVATE CITIZEN

On motion of Thomas S. Tobin, attorney for the Trustee, it is

Ordered that R. J. Phelan of Los Angeles, California, or any other citizen of the United States over the age of twenty-one years, may serve the foregoing petition for order to show cause quieting title to real property and the order to show cause upon the persons named therein, who should be personally served, with the same force and effect as though said process were served by the United States Marshal for the Southern District of California.

Done at Los Angeles, in the Southern District of California, this 17th day of November, 1950.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed November 17, 1950. [57] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

AFFIDAVIT OF SERVICE ON WALTER G.
JOHNSON AND RUTH VENA JOHNSON

State of California,
County of Los Angeles—ss.

R. J. Phelan, being first duly sworn on oath, deposes and says:

That she is a citizen of the United States and of the State of California, and over twenty-one years of age; that pursuant to the order entered herein by Honorable Benno M. Brink, Referee in Bankruptcy, your affiant did, on November 24, 1950, at Beverly Hills, in the County of Los Angeles, and the Southern District of California, serve two copies of the petition for order to show cause quieting title to real property, and the order to show cause issued thereunder, on Walter G. Johnson, one copy for the Johnson Realty Co. and the other for Walter Johnson, also known as Walter G. Johnson, also known as Walter George Johnson.

Your affiant further deposes and says that on the 25th day of November, 1950, at the California Institute for Women at [61] Tehachapi, in Kern County, in the Southern District of California, your affiant served five copies of said petition for order to show cause quieting title to real property and the order to show cause issued thereunder, on Ruth Vena Johnson, also known as Vena Ruth Johnson, for herself, and one copy each for the Boyce Realty Co., a corporation, of which she is an officer; one copy for the Boyce Realty Co., a fictitious firm name and style used by Ruth Vena Johnson, also known as Ruth Boyce; one copy for the Boyce Realty Co., a copartnership consisting of Ruth Vena Johnson and an unknown partner or partners, and one copy for the Hollywood Real Estate School, owned and operated by the bankrupt as Louise Crooks.

That your affiant delivered the copies of said

petition and order to each of the persons so served personally, and knows them and each of them to be the persons designated to be so served.

/s/ R. J. PHELAN.

Subscribed and Sworn to before me this 7th day of December, 1950.

[Seal] /s/ C. W. ROBINSON,

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires April 16, 1952.

[Endorsed]: Filed December 7, 1950. [62] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

APPLICATION FOR AN EXTENSION OF
TIME TO FILE AN ANSWER IN THE PE-
TITION FOR ORDER TO SHOW CAUSE
QUIETING TITLE TO REAL PROPERTY,
UNDER ART. I, PART II, ADM. IV, V,
VI, VIII OF THE CONSTITUTION OF
THE UNITED STATES, CIVIL RIGHTS
STATUTE

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Now Comes This Bankrupt, Ruth Vena Boyce,
in Her Behalf and the Behalf of the Said Daughter,

Gladys Venes, and Her Children, Under a Power-of-Attorney That Is Duly Given to This Bankrupt to Act for and in Behalf of the Said Daughter and Her Children. This Bankrupt Comes This Day Applying and Making, Asking for an Extension of Time to File an Answer This Said Order to Show Cause on the Following Grounds as Heretofore Set Forth:

I.

That this Bankrupt is in custody of the State Prison at Tehachapi, California, the women's institution for women, and this Bankrupt was not duly notified of the said action until she was taken from the County of Los Angeles, which does hereby deprive her of the necessary time to secure counsel to defend this action. And this Court was duly in knowledge of the facts that exist as they are today and did sit and wait until this Bankrupt was taken from the City and County of Los Angeles, to defend herself and the owners involved in this matter, which this comes under the Civil Rights Statute of the Constitution of the United States. Then two days later, after she was taken from any source of help, the said Court and [63] the said counsel for the Trustee did send an officer to deliver to this said Bankrupt a notice of the said proceedings, knowing that this Bankrupt did not have her legal papers and documents to file an answer in the matter, which is taking the advantage of a person when you know that you have them where they cannot help themselves. This Bankrupt was delivered

to this institution on November 16th, 1950, which this said Court is well aware of, and she has certain procedures to go through before that she may or can have the papers and documents that she needs to defend herself, and, it becoming necessary for her to secure counsel, she prays to this Court for an extension for thirty days from this date, December 7th, 1950, to file the said answer. This Bankrupt is here without her files in the said matter, or papers, etc., and it therefore becomes necessary to have an extension of time to file the said answer.

II.

Whereupon, this Bankrupt prays to this Hon. Court, Benno M. Brink, for the said extension of time to answer the said Order to Show Cause, and the said time be extended until January 20th, 1951, to enable this Bankrupt to secure legal counsel to file the proper answer.

Witness my hand and seal this, the 7th, day of December, 1950.

/s/ RUTH BOYCE,

In Propria Persona.

[Endorsed]: Filed December 9, 1950. [64] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

CLAIM TO HOMESTEAD EXEMPTION: IN
REAL PROPERTY, UNDER SECTION
#1260 AND SECTION #1261-B-C OF THE
CIVIL CODE STATUTE OF THE CALI-
FORNIA LAW

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Comes now this Bankrupt, who does hereby file a Notice and Claim under the Statute of the California Law, Civil Code of Procedure, Section #1260 and Section #1261-B-C. That if this Court holds that this property, known and recorded as Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per Map recorded in Book 88, pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County, being deeded to her daughter Gladys Venes and her children as their separate property being declared a fraudulent conveyance, which it was not. And this will be reopened in the U. S. District Court under the Civil Rights Statute if it is twenty years from this date, for this property has been taken illegally and unlawfully. Then if this Court holds that this Bankrupt is the legal owner of the said property, then she is entitled to her homestead exemption filed on November 18th, 1944, as the head of a family under Section #1261-B-C, and therefore files a Lien on

the said property for the Homestead exemption, under the said law, as there was a legal homestead filed and the said property was paid for cash. And this Bankrupt files and claims a homestead exemption to the amount of \$7,500.00 under the said law, Section #1261-B-C of the CCP. The said same Lien of Homestead being filed in the Los Angeles County Court House as of today. This Court having declared this conveyance to be a fraudulent conveyance, then it in reality becomes this Bankrupt's right under the law to her exemption of the homestead filed on November 18th, 1944, and a homestead comes ahead of any creditor, or creditors. And this Bankrupt holds that she objects to this quieting this title until this matter [65] has been settled in the courts. And the said homestead exemption has been declared under their false claim, and unlawfully taking of property that does not belong to this Court, and ask that this Court make no ruling in the quieting the title of this real property herein described until this Bankrupt has had her day in court, which every American citizen of the United States is given under the Constitution of the United States, Art. I, Part II, of the Constitution of the United States.

Whereupon, this Court has taken the advantage of this Bankrupt's position to settle this issue in waiting until she was sent out of the County of Los Angeles, to defend this action. Therefore, this is obstructing justice, and this Bankrupt demands an extension of time be granted to give her to secure legal counsel to defend this action:

Witnesseth: My hand and seal this 8th day of December, 1950, under my Civil Rights granted to me by the Board, December 5th, 1950.

/s/ RUTH BOYCE.

[Endorsed]: Filed December 11, 1950. [66] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

ORDER CONTINUING HEARING ON ORDER
TO SHOW CAUSE IN RE CERTAIN REAL
PROPERTY

Upon the application of Ruth Boyce, aka Ruth Vena Johnson, the above-named bankrupt, and good cause appearing therefor,

It is ordered that the hearing on the Order to Show Cause in re Certain Real Property, issued in the above-entitled matter on November 9, 1950, be and it hereby is continued from the 14th day of December, 1950, to the 25th day of January, 1951, at 10:00 a.m., in the courtroom of the undersigned Referee, 323 Federal Building, Temple and Spring Streets, Los Angeles, California.

Dated: December 14, 1950.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed December 14, 1950. [67] Referee.

[Title of District Court and Cause.]

HOMESTEAD EXEMPTION CLAIM

Now comes this Petitioner, Ruth Boyce, who under her civil rights granted to her on December 5th, 1950, she does hereby file under the law, Section #1260 and Section #1261-B-C, of the Civil Code of Procedure of the Statute of the California law, her legal claim to and her rights to the Homestead Exemption in that real property as follows: Situated in the City of Los Angeles, County of Los Angeles, State of California, and described as Lot 4 in Block 29 of Tract 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per Map recorded in Book 88, pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County.

This said Homestead Exemption claim being claimed under a homestead filed in this said County and City in the records of the said County Recorder on November 18, 1944. This said Ruth Boyce, being then Ruth Johnson, when filed the said homestead on November 18, 1944. And the said Ruth Boyce, being the head of the family and the home, and this said property being paid cash for, she files and declares her Homestead Exemption under the laws of the Statute of the California law, in the amount of Seven Thousand and Five Hundred (\$7,500.00) Dollars, in and unto that real property, described as follows: Lot 4 in Block 29 of Tract 7555, in the City and County of Los Angeles, State of California, as per Map recorded in Book 88, pages 79 to

84, inclusive, in the office of the County Recorder of said County.

Witnesseth: My hand and seal this, the 8th, day of December, 1950.

/s/ RUTH BOYCE JOHNSON.

Homestead claim filed 1-4-51.

[Endorsed]: Filed January 6, 1951. [68] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

ORDER QUIETING TITLE TO
REAL PROPERTY

George Gardner, Trustee in Bankruptcy, having filed his petition with the Referee for an order against various persons, firms, copartnerships, associations and governmental agencies, seeking to quiet title to real property situated within the County of Los Angeles and State of California, described as

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County;

and an order to show cause having issued directed to the persons, firms, corporations, copartnerships, associations and governmental agencies requiring

them to appear before the undersigned Referee in Bankruptcy at his courtroom in the Federal Building, Los Angeles, California, on December 14, 1950, at the hour of 10:00 o'clock a.m. [70] of said day, and to then and there establish any right, title, interest, lien or claim in their favor to the real property hereinbefore described, and to show cause why the Trustee should not be decreed to be the owner of said real property free and clear of any right, title, interest, lien, claim, or homestead right therein, and why the Trustee should not be authorized to sell said real property for the benefit of the bankrupt estate, and directing that personal service be made upon the minor respondents therein named, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes, Judith Venes, John Doe Venes and Jane Doe Venes in the State of New Jersey, or wherever they may be residing, and that personal service be made if possible on the bankrupt, Ruth Vena Johnson, also known as Ruth Boyce, and Walter Johnson, also known as Walter G. Johnson, also known as Walter George Johnson, and service be made on the other respondents by mail; and it appearing to the Court from the return of service of the United States Marshal for the District of New Jersey that personal service was made on the respondents, Gladys Venes and John Doe Venes, her husband, whose true name is Frank Venes, and that personal service was likewise made upon said minor respondents, Frank W. Venes, Jr.; Ruth Venes, Mary Jane Venes, Judith Venes, John Doe Venes (whose true name is Ralph Venes), and Jane Doe Venes by said

United States Marshal for the District of New Jersey, as appears from his return of service on file herein, and that personal service was obtained on the bankrupt, Ruth Vena Johnson, also known as Ruth Boyce, at the California Institute for Women at Tehachapi, in Kern County, by service of five copies of said petition for order to show cause and order to show cause issued thereunder, on Ruth Vena Johnson, also known as Vena Ruth Johnson, for herself, and one copy each for the Boyce Realty Co., a corporation; one copy for the Boyce Realty Co., a fictitious firm name and style used by Ruth Vena Johnson, also known as Ruth Boyce; one copy for the Boyce Realty Co., a copartnership consisting of Ruth Vena Johnson and an [71] unknown partner or partners, and one copy for the Hollywood Real Estate School, owned and operated by the bankrupt as Louise Crooks; and that personal service was likewise obtained on Walter G. Johnson by serving one copy for himself and one copy for the Johnson Realty Co., as appears from the affidavit of service of R. J. Phelan herein filed; and all of the rest of the respondents having been duly served by mail, and an order having been made appointing Frank M. Chichester, guardian ad litem for the minor defendants, and each of them, under date of December 5, 1950, and after personal service of said minor defendants a supplemental order appointing the said Frank M. Chichester as guardian ad litem for said minor defendants, and said matter having been called for hearing on December 14, 1950, at 10:00 a.m., and because of the late date of

service on the respondent, Frank Venes, in Scotch Plains, New Jersey, and upon written request made by the bankrupt, Ruth Vena Johnson, for a continuance, the Court having continued the matter to January 25, 1951, at 10:00 o'clock a.m., and it appearing to the Court that counsel for the Trustee notified the defendants Venes of said continuance and of the appointment of Frank M. Chichester as guardian ad litem, and of their rights to enter their appearance in the matter before January 25, 1951, and no appearance having been entered on behalf of Gladys Venes or Frank Venes, and said matter having been called on January 25, 1951, at 10:00 a.m., the respondent Walter Johnson appearing in person and by his attorney, Louis Most, and the respondent Harry V. Mooney having filed an answer to said order to show cause but not having appeared at the trial, and the respondent Bank of America National Trust and Savings Association having appeared by its attorney, William J. Tiernan, and filed an answer, and the respondents Roy P. Schoettler and Roy P. Schoettler doing business as Pacific Coast Claim Adjusters, and Pearl Schoettler, named herein as Jane Doe Schoettler, having filed an appearance and waived any claim of interest in and to said real property, and the United [72] States Government appearing by Edward R. McHale, Assistant United States Attorney, and at the further adjourned hearing having appeared by Eugene Harpole, Special Assistant to the Attorney General, and the City of Los Angeles having appeared by C. J. Multhauf, Deputy City

Attorney, and the remainder of the respondents not appearing in any manner, and some testimony having been taken and the matter having again been adjourned to February 6, 1951, at which time there appeared Thomas S. Tobin, attorney for the Trustee, and Eugene Harpole, representing the Collector of Internal Revenue of the United States, and Frank M. Chichester, guardian ad litem for the minor children, respondents hereinbefore named, and testimony having been taken and evidence received and the Referee being fully advised in the premises, now finds the following facts:

I.

That George Gardner, Trustee in Bankruptcy for the bankrupt estate of Ruth Vena Johnson, also known as Ruth Boyce, is now in actual possession of real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County;

that said real property was not scheduled in the bankrupt's schedules nor did the bankrupt make any attempt to claim the same as exempt; that she concealed said real property from her Trustee in Bankruptcy by means of a fraudulent transfer to

her daughter, Gladys Venes, and her minor children; that proceedings were instituted in the United States District Court for the Southern District of California, Central Division, on October 28, 1947, by the Trustee herein, to [73] set aside and avoid said fraudulent conveyance; that on February 10, 1949, a decree was entered by Honorable William C. Mathes, United States District Judge, before whom said action was tried, decreeing said transfer to be fraudulent and void as to creditors of said bankrupt and as to George Gardner, her Trustee, and avoiding the same, and decreeing the Trustee, George Gardner, to be the owner of said property; that said decree was appealed from by the bankrupt and affirmed by the United States Court of Appeals for the Ninth Circuit, has long since become final, and that it and its supporting pleadings and stipulations were received by the Court by reference and constitute the muniment of title of the Trustee.

II.

The Court finds that although the defendant Ruth Vena Johnson was named as a party defendant in said action and actively defended the same, that at no time during the course of said action did she set up as a defense the declaration of homestead which she had caused to be recorded in Book No. 21478, Page 52, of Official Records, and that she asserted her claim of homestead for the first time in this proceeding notwithstanding the decree of the United States District Court that the said transfer was fraudulent and void.

III.

The Court finds that the respondent Bank of America National Trust and Savings Association has a lien against said real property based on an abstract of judgment for \$67.00; that it was recorded more than four months before the filing of the petition in bankruptcy and constitutes a valid lien, and that the Trustee should pay the same.

IV.

The Court finds, based on stipulation entered into between C. J. Multhauf, Deputy City Attorney, and George Gardner, Trustee herein, that the abstract of judgment for \$31.05 filed by the Department of Water and Power was filed after bankruptcy, and the [74] Department of Water and Power has no lien on said real property.

V.

The Court finds that the respondent, Walter G. Johnson, has no right, title, interest, lien or claim in and to said real property, and his counsel, Louis Most, has so stipulated.

VI.

The Court finds that the lien of the judgment held by the respondent Harry V. Mooney expired on October 18, 1950, by virtue of the expiration of five years from the date of recordation and had ceased to be a lien on said real property.

VII.

The Court finds that in the action instituted in the United States District Court for the Southern District of California, described in Paragraph I herein, the respondent, Gladys Venes, was named as a party defendant and appeared therein and defended the same, together with the defendant Ruth Vena Johnson, and that at no time during the course of said action did she set up as a defense any declaration of homestead recorded by her or on her behalf on January 29, 1946, in Book 22,775, at Page 152, Official Records, nor any declaration of homestead.

The Court Concludes, as Conclusions of Law,
as Follows:

I.

That the Trustee being in lawful possession of the real property hereinbefore described at the time of the institution of this summary proceeding to quiet title, this Court has summary jurisdiction over the subject matter of this action, the real property in question and of the persons of the respondents herein.

II.

The Court concludes that the real property in question constituted property, title to which passed to the Trustee under the provisions of Section 70-a, Subdivisions 4 and 5, as property [75] transferred by the bankrupt in fraud of her creditors, and property which prior to the filing of the petition

she could by any means have transferred or which might have been levied upon or sold under judicial process against her, or otherwise seized, impounded or sequestered.

III.

The Court concludes that title to said real property was vested in the Trustee by virtue of the decree of the United States District Court for the Southern District of California, entered by Honorable William C. Mathes, United States District Judge, on February 10, 1949, subject to any valid liens or claims of record in the office of the County Recorder of Los Angeles County, State of California, where said real property is situated.

IV.

The Court concludes that none of the respondents herein have any right, title, interest, lien or claim against said real property, valid as against the Trustee, save and except the lien of the respondent Bank of America National Trust and Savings Association in the sum of \$67.00, as described in Paragraph III of the findings of fact.

V.

The Court concludes that George Gardner, as Trustee in Bankruptcy for the estate of Ruth Vena Johnson, also known as Ruth Boyce, bankrupt, is the owner of said real property free and clear of any claims or liens asserted by any of the respondents hereto, save and except the lien of the Bank

of America National Trust and Savings Association in the sum of \$67.00, and that the Trustee should be authorized to sell the same for the benefit of the bankrupt estate.

Based on the Foregoing Findings and Conclusions,
the Court Makes the Following Order: [76]

Now on motion of Thomas S. Tobin, attorney for the Trustee, it is

Ordered, Adjudged and Decreed:

That George Gardner, Trustee in Bankruptcy for the estate of Ruth Vena Johnson, also known as Ruth Boyce, is the owner of real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as:

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County,

free and clear of any right, title, interest, lien or claim against the same, asserted by any of the respondents herein, save and except a lien based on an abstract of judgment in the sum of \$67.00 held by respondent Bank of America National Trust and Savings Association, as described in Paragraph III of the findings herein, which lien the Trustee is authorized and directed to pay.

It Is Further Ordered, Adjudged and Decreed that none of the other respondents herein have any right, title, interest, lien or claim in and to said real

property, and that the Trustee herein be authorized to sell the same as an asset of the bankrupt estate in conformity with the provisions of the National Bankruptcy Act respecting sales of property of bankrupt estates.

Done at Los Angeles, in the Southern District of California, this 14th day of February, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed February 14, 1951. [77] Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

PETITION FOR ORDER EXTENDING TIME
TO FILE PETITION FOR REVIEW OF
ORDER FOR SALE OF PROPERTY AND
DISALLOWING CLAIM FOR HOME-
STEAD EXEMPTION

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

Comes now your petitioner, Joseph Mayer, and respectfully shows the referee:

That on or about February 15th, 1951, he was employed by the above-named bankrupt as her attorney. That said bankrupt is confined in the California Institute for Women at Tehachapi. That on or about February 14, 1951, an Order was made denying the claim of bankrupt for homestead ex-

emption and quiet title to certain real property described in said Order.

That it is the intention of your petitioner to file a petition for review of said Order, but that before properly preparing such petition it is essential for him to thoroughly study the pleadings and to make certain investigation and study the laws in connection with the subject matter. That it would take at least thirty (30) days to do this.

Wherefore, your Petitioner prays that the time of the bankrupt to file petition for the review of aforesaid Order be extended for at least thirty (30) days.

/s/ JOSEPH MAYER,
Petitioner.

Duly verified.

[Endorsed]: Filed February 23, 1951. [78]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

ORDER EXTENDING TIME WITHIN WHICH
TO FILE PETITION FOR REVIEW OF
ORDER QUIETING TITLE TO REAL
PROPERTY

Upon the reading and filing of the petition of Joseph Mayer, attorney for the above-named bankrupt, for an extension of time within which to file a petition for review of the Order made on February 14, 1951, to quiet title to real property.

Good Cause Appearing it is Hereby Ordered that the time of the bankrupt to file a petition for review of the aforesaid order quieting title to real property be, and hereby is extended to and including March 23, 1951.

Dated: February 23, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed February 23, 1951, [80]
Referee.

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

PETITION FOR REVIEW

To the Honorable District Court of the United
States, Southern District of California, Cen-
tral Division

Comes now your Petitioner, Ruth Vena Johnson,
aka Ruth Boyce, and respectfully shows:

I.

That on or about February 14, 1951, the Honorable Benno M. Brink, Referee in Bankruptcy, made an Order denying the Homstead claim of the bankrupt and quieting title in the name of the Trustee in Bankruptcy in the above matter, in premises known as 6417 Drexel Avenue, Los Angeles, California, more particularly described as

“Lot 4, Block 29, Tract 7555, City of Los Angeles, as per Book 88, Pages 79 to 84 of Records in the office of the County Recorder of the County of Los Angeles.”

II.

That the aforesaid Order and Judgment quieting title is based upon findings contained in said Order, which are erroneous and contrary to law. [96]

III.

That the court made a finding that the real property in question was concealed by the bankrupt and not scheduled, nor did bankrupt make any attempt to claim homestead exemption. This finding is erroneous inasmuch as the bankrupt prior to filing her petition in bankruptcy had made a conveyance of said property to her daughter, Gladys Venes, and she could not properly have scheduled it as an asset in her bankruptcy petition. Had she done so it would have placed a cloud on the title to the property.

IV.

The Referee's findings that the bankrupt concealed the real property in question from her Trustee in Bankruptcy by means of a fraudulent transfer to her daughter is erroneous for the reason that the creditors could not possibly have had any interest in said property except such as would be over and above her homestead exemption of \$7500.00, inasmuch as the bankrupt had filed a declaration of homestead Prior to Filing Her Petition in Bankruptcy.

V.

The Referee also found that the bankrupt did not set up as a defense her claim for homestead exemption in an action by George Gardner, as Trustee, to have declared void a transfer of the real property in question to the bankrupt's daughter, which action was tried in the United States District Court before Honorable William C. Mathis.

This finding is erroneous for the reason that the issue in that action was solely whether or not the transfer to the daughter of the bankrupt was void and in the proceeding the Principal Defendant Was the Daughter. The bankrupt therefor could not properly, in that proceeding, claim a homestead. It Was Only After the Decree in the United States District Court Declaring the Transfer to Gladys Venes Void and Judgment That the Property Belonged to the Bankrupt Did She Have Any Right to Assert Her Homestead Rights, Nor [97] Schedule the Property as One of Her Assets.

VI.

The findings and Order of the Referee, Honorable Benno M. Brink, based on the judgment of Honorable William C. Mathis, is erroneous for the reason that the judgment of said Honorable William C. Mathis was itself erroneous, at least insofar as the judgment is to effect that the transfer by the bankrupt to her daughter of the property in question was to defraud her creditors, for the reason that the bankrupt having prior to filing her petition in bankruptcy filed a declaration of home-

stead exemption on the property in question, and the transfer to her daughter of said property could not properly have been held to be in defraud of creditors, At Least Not Over and Above Her Own Homestead Exemption of \$7500.00.

Wherefore, Petitioner prays that the Order made by the Honorable Benno M. Brink on or about February 14, 1951, quieting title to the real property hereinbefore referred to, and denying the Homestead claim of the bankrupt, be reviewed, vacated and set aside.

/s/ RUTH VENA JOHNSON,
Petitioner.

/s/ JOSEPH MAYER,
Attorney for Petitioner.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 22, 1951, Referee. [98]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

SUPPLEMENT TO REFEREE'S CERTIFICATE
ON PETITIONS FOR REVIEW OF
ORDER QUIETING TITLE TO REAL
PROPERTY

To the Honorable Leon R. Yankwich, Judge of the
Above-Entitled Court:

At the request of counsel for George Gardner,
the trustee in bankruptcy herein and one of the

respondents on review in this matter, I, Benno M. Brink, one of the Referees in Bankruptcy of the said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby supplement my Referee's Certificate on Petitions for Review of Order Quieting Title to Real Property, which I filed in this proceeding on April 5, 1951, by making the following statement from the papers in this case:

I transmit herewith a photostat of Schedule B-5, page 13, of the schedules in bankruptcy filed by the bankrupt herein on April 24, 1947.

The aforesaid George Gardner, the trustee in bankruptcy in this matter, did not file in this case any report of exempted property. It is customary in a bankruptcy [100] for the Referee to make an order upon the trustee's report of exempted property, but since no such report was filed in this case no such order was made in this matter.

Respectfully submitted this 28th day of June, 1951.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed June 28, 1951, U.S.D.C. [101]

[Title of District Court and Cause.]

No. 44,916-Y Bkey

OPINION ON PETITION FOR REVIEW

Appearances:

For the Trustee:

THOMAS S. TOBIN,
Los Angeles, California.

For the Bankrupt:

JOSEPH MAYER,
Beverly Hills, California. [103]

Yankwich, District Judge:

Ruth Vena Johnson was adjudicated a bankrupt on April 24, 1947, upon a voluntary petition. On November 18, 1941, she filed a declaration of homestead on certain residential property, which was duly recorded as required by the law of California. (California Civil Code, Secs. 1237 et seq.)

On December 2, 1944, she executed a deed of gift by which she attempted to convey the property on which the homestead had been declared to her daughter and "her children." The deed was recorded on December 29, 1944.

On December 14, 1944, she executed a grant deed to the same property to her daughter, which was recorded on January 16, 1945.

In the course of the administration of the estate, the Trustee, on October 28, 1947, instituted an

action in this court to avoid the conveyance. After trial, the court, Judge William C. Mathes, found that the execution of the instruments was without fair consideration and in fraud of the creditors then existing and future creditors, in violation of Section 70(e) of the Bankruptcy Act of 1938, and Sections 3439.02, 3439.03, 3439.04 and 3439.07 of the Civil Code of California. Specifically, the Court's findings referred to the fact that the conveyance was to defraud Harry V. Mooney, one of the creditors in this proceeding, to whom, on December 2, 1944, she was indebted in the sum of \$10,000.00 or more. (Findings VIII and XI.) [104]

A judgment was entered on February 10, 1949, setting aside the conveyances as "fraudulent and void as to the creditors of the defendant, * * * and as to George Gardner, her trustee in bankruptcy."

The bankrupt did not set up the homestead right in her Answer and the Court, in the decree, made no adjudication as to its validity. The decree has become final.

On February 14, 1951, after a hearing upon an Order to Show Cause why the title of the Trustee to the property should not be quieted against the bankrupt and others, the Referee made an order declaring that George Gardner, as Trustee in Bankruptcy, was the owner of the property on which the homestead had been filed, free and clear of any right, title and interest asserted by the bankrupt.

This is a petition to review the Order.

I.

The Abandonment of Homesteads
Under California Law

The only question presented is whether the homestead rights of the bankrupt still subsist. Many questions relating to state exemptions in bankruptcy are covered by the writer's opinion in *re Dudley*, 1947, D. C. Calif., 72 F. Supp. 943, which, on appeal was adopted by the Court of Appeals for the Ninth Circuit. (See, *Groggin v. Dudley*, 1948, 9 Cir., 166 F(2) 1023.) So, to avoid repetition, only the specific norms which govern the determination of this matter not there treated will be referred to. The most [105] important of these is that the trustee in bankruptcy acquires only such property as is not exempt under the state law. (Bankruptcy Act, Sections 6, 7(A) (8), 11 U.S.C.A. Secs. 24, 25(A) (8).) The right to exemption is governed by state law. (*Turner v. Bovee*, 1937, 9 Cir., 92 F(2) 791; *Negin v. Salomon*, 1945, 2 Cir., 151 F(2) 112; *In re Dudley*, *supra*, and cases cited in Note 3; *In re Fogel*, 1947, 7 Cir., 164 F(2) 214, 215-216; 3 *Remington on Bankruptcy*, 4th Ed., 1941, Sec. 1278.)

This rule is not affected by the provision of the bankruptcy law to the effect that exemptions shall not be allowed out of property which a bankrupt transferred or cancelled and which is recovered by the Trustee. (Bankruptcy Act, Sec. 6, 11 U.S.C.A., Sec. 24.) Under this provision, property recovered

by the Trustee in bankruptcy must be distributed to the creditors and cannot be impressed with an exemption. That is all that *Moore v. Bay*, 1931, 284 U. S. 4, decided under the old Act, teaches, and it does not mean that where, as here, a proper homestead declaration existed at the time of bankruptcy and an intervening attempt to convey the same property has been invalidated, the right to the homestead cannot be recognized in bankruptcy court. Under the law of California, a homestead may be abandoned by "a grant thereof." (California Civil Code, Sec. 1243.)

A "grant," under this section, implies a conveyance effective as a transfer of title. (California Civil Code, Sec. 1242; *Faivre v. Daley*, 1892, 92 C. 664; *Bank of Suisun v. Stark*, 1895, 106 C. 202; *White v. Rosenthal*, 1934, 140 C. A. 184; *First Trust & Savings Bank v. Warden*, 1936, 18 C. A. (2) 131; *Dixon v. [106] Russell*, 1937, 9 C (2) 262.) Thus, a defectively executed deed, not accompanied by possession, would not work as an abandonment. (40 C.J.S., Homesteads, Sec. 173, p. 655.)

In the present case, the bankrupt's attempts to deed the property to her daughter were declared fraudulent, both under the state law and the Bankruptcy Act, at the suit of the Trustee. The attempted conveyances having been set aside, the property is in the same status it had before the deed was executed, i.e., subject to the burden of the homestead. It is as though the conveyance had been made without consideration or subject to reservations showing an intention not to part with title

—of the type which California courts have held to be ineffective to abandon the homestead. (See *Palen v. Palen*, 1938, 28 C.A. (2) 602; *Arighi v. Rule & Sons, Inc.*, 1940, 41 C.A. (2) 852, 856; *Vieth v. Klett*, 1948, 88 C.A. (2) 23.)

II.

Homesteads Not Subject to Law of Fraudulent Conveyances

We must give full effect to these decisions and all their implications, unless we are satisfied that the bankrupt's fraudulent acts in dealing with the property warrants her being deprived of the benefit of the homestead. That question must be determined by the state law. And the law of California for over sixty years has been that the doctrine which invalidates fraudulent conveyances against creditors has no application to the creation of a homestead. In one of the earliest cases on the subject (*Fitzell v. Leaky*, 1887, 72 C. 477, 482) the principle [107] was stated in this language:

“The doctrine bearing upon conveyances made to hinder, delay, or defraud creditors has no application to the creation of a homestead.”

This principle, in the same language, has since been repeated, without variation in a large number of cases. Among them are: *Beaton v. Reid*, 1896, 111 C. 484, 487; *Simonson v. Burr*, 1898, 121 C. 582, 587; *Gray v. Brunold*, 1903, 140 C. 615, 624 (where the action to set aside a fraudulent conveyance was instituted by a trustee in bankruptcy); *Schmidt v.*

Denning, 1931, 117 C.A. 36, 39; Yager v. Yager, 1936, 7 C (2) 213, 217; Montgomery v. Bullock, 1938, 11 C (2) 58, 62; Parker v. Riddell, 1940, 41 C.A. (2) 908, 914 (in which the trustee in bankruptcy attacked the homestead); Duhart v. O'Rourke, 1950, 99 A.C.A. 318, 321.

The Court of Appeals for the Ninth Circuit in Turnbeaugh v. Santos, 1944, 9 Cir., 146 F (2) 168, adopted the doctrine declared by these cases (citing the latest among them) in setting aside a district court order which had refused to give it full scope.

I do not believe we are in a position to disregard these cases—satisfied though we may be, as the Referee was, that the bankrupt has been guilty of brazen fraud in dealing with her creditors. For, in the last analysis, if, by legislative policy, courts of California have chosen to give absolution to homestead declarations from acts of a fraudulent character, we cannot recall it. Nor can we give life to an attempted abandonment [108] which is ineffective under California law. As already stated, the basis for the finding that the conveyances to the daughter were a fraud on creditors was that they were motivated by the threat by Harry V. Mooney, to institute an action to recover from the bankrupt the sum of \$10,000.00 upon transactions alleged to have taken place between August 23, 1944, and September 26, 1944. Mooney had judgment for \$10,-970.64 on October 5, 1945, and his right to the claim in that amount was before the Referee in the proceeding under review. The findings of the Court in the action to set them aside to the effect that the

conveyances were in fraud of the creditors are reinforced by one of the findings of the Referee in denying discharge, which has already been affirmed by this Court, that, notwithstanding the conveyances to the daughter, the bankrupt retained possession and an interest in the property attempted to be conveyed and received income from it, which she concealed. This puts the case in the ambit of the principle already referred to that a conveyance whereby an interest is retained is not an abandonment of the homestead. (See, especially, *Arighi v. Rule & Sons, Inc.*, supra, pp. 855, 856; *Vieth v. Klett*, supra, pp. 27-28. And see 13 R.C.L., *Homesteads*, Sec. 118, pages 659-661; 26 Am. Jur., *Homesteads*, Sec. 199.) And a conveyance to defeat creditors is not an abandonment. In *Palen v. Palen*, 1938, 28 C.A. (2) 602, the Court, after referring to the various exceptions to the rule that a conveyance is, ordinarily, an abandonment, [109] states:

“Neither is a homestead abandoned by a conveyance made for the purpose of avoiding creditors.” (p. 606.)

In reaching this conclusion, the Court adopts as its own the reasons given in 13 R.C.L., loc. cit., p. 660:

“A homestead is not liable to seizure under execution, and therefore a conveyance of it is a question in which the creditor has no interest. It was not liable before conveyance to the claim he asserts; and the conveyance, though fraudulent, puts the creditor in no better condition than he was in before. If the conveyance is set

aside as fraudulent this leaves the homestead as if no attempt had been made to convey it, so far as any claim can be asserted by the creditor. It is void as to him to all intents and purposes. He cannot be heard to say in one and the same breath that the conveyance is void in its attempt to divest title out of the debtor, but valid in destroying the homestead right. He cannot claim both under and against the conveyance; under it as a valid parting with the homestead right; against it as an abortive effort to pass title out of the debtor. It must stand as to him as if no conveyance had been attempted." [110]

This summary is a correct distillation of the rulings in a large group of cases from many American jurisdictions. And there has been no recent deviation from them. To the contrary, the latest adjudicated cases and writers on the subject confirm them and the reasons behind them. See 24 Am. Jur. Fraudulent Conveyances, Sec. 109; 37 C.J.S., Fraudulent Conveyances, Sec. 31; *Wood v. Emig*, 1943, 58 C.A. (2) 851, 859, 861, in which a hearing by the Supreme Court of California was denied. *In re Rohl*, 1929, 8 Cir., 34 F (2) 268, 270, applying the homestead law of South Dakota; *Smith v. Jackson State Bank*, 1933, 10 Cir., 63 F (2) 934, 936, applying the homestead law of Wyoming; and the following cases applying the homestead law of Missouri: *Farmers' Bank of Higginsville v. Handley*, 1928, 320 Mo. 754, 9 S.W. (2) 880, 894-895; *May v. Gibler*, 1928, 319 Mo. 672, 4 S.W. (2) 769,

772; *Bank of New Cambria v. Briggs*, 1951, 236 S.W. (2) 289, 293.

These cases merely apply to homesteads the general rule that a conveyance of exempt property of any kind is not in fraud of creditors: 24 Am. Jur., *Fraudulent Conveyances*, Sec. 109; *The Prudential Life Insurance Co. v. Beck*, 1940, 39 C.A. (2) 355, 360-361; *Sharp v. Hawks*, 1936, 8 Cir., 80 F(2) 731, 732; *Citizens National Bank v. Turner*, 1937, 5 Cir., 89 F (2) 600, 601.

One of the older cases has summed up these decisions in a brief statement with a Biblical overtone:

“The homestead and other statutory exemptions are forbidden fruit to the creditor. He may neither pluck nor eat thereof.” (*Walther v. Null*, 1911, 233 Mo. 104, 122, 134 S.W., 993, 999.) [111]

In *Wetherly v. Straus*, 1892, 93 C. 282, 286, the Supreme Court of California, in protecting against creditors' money derived from the sale of the homestead, said:

“The homestead from which the money was derived was not subject to the claim of any creditor of the plaintiff's husband, and a transfer of it by the husband to her could not, under any circumstances, be held as a matter of fact to be with the intent to defraud his creditors. His creditors could not, by any legal process, take the property covered by the homestead, and its voluntary transfer to the wife would not ‘obstruct the enforcement by legal process of

any right to take the property affected by the transfer.' (Civil Code, Sec. 2441.) Neither would such transfer of its proceed."

See, *Estate of Fath*, 1901, 132 C. 609, 613; *Yardley v. San Joaquin Valley Bank*, 1906, 3 C.A. 651, 656.

In brief, no one is a creditor as to exempt property, within the meaning of the law of fraudulent conveyances. (*The Prudential Ins. Co. v. Beck*, *supra*; *Nicholson v. Nesbit*, 1906, 2 C.A. 585, 587-588. And see, *Luhrs v. Hancock*, 1901, 181 U.S. 567, 570.)

The logic of these rulings cannot be gainsaid. As the creditor cannot subject the homestead to the satisfaction of his debt, a conveyance of it cannot injure him. For he is not harmed [112] by being deprived of the right to subject to the satisfaction of his claim property not subject to seizure. Otherwise put, if the homestead is valid, no attempted disposition or conveyance of the property, however fraudulent, injures the creditor. For such act, whether successful or not, leaves the creditor in the same position in which he would have been before it was done.

As said in *Citizens National Bank v. Turner*, *supra*, p. 601:

"When property is immune from seizure by the creditor, he has no legal interest in it and cannot complain of its transfer, even though the conveyance was voluntary, with bad motive and to avoid creditors."

The application of these principles to the situation which confronts us in this case means that the

bankrupt's deed to her daughter having been set aside, the claim of homestead remains intact. The bankrupt has done nothing in this court which can be interpreted as a waiver of her right to the homestead. To the contrary, she has asserted it repeatedly, in these proceedings, although, at times and because of lack of counsel, inexpertly. But even if she had not asserted it before, when the Trustee made her a respondent to his petition for the Order to Show Cause and sought to have his title to the property quieted against her, and she appeared, the right to the homestead was put in issue. The Referee's Order adjudicated it. And if that adjudication is erroneous, it matters not that the bankrupt did [113] not, prior to the Order to Show Cause, ask that her homestead rights be recognized. (See, *In re Etherton*, 1950, D.C. Cal., 88 F. Supp. 874, 878-879.) For, from this challenge, accepted by the bankrupt, came an order which, if reversed, leaves the bankrupt's assertion of her homestead rights intact.

The Order of the Referee, dated February 14, 1951, insofar as it relates to the rights of the bankrupt to the homestead property is reversed.

Dated this 16th day of May, 1951.

/s/ LEON R. YANKWICH,
Judge.

[Endorsed]: Filed May 16, 1951, U.S.D.C. [114]

In the District Court of the United States,
Southern District of California, Central Division
In Bankruptcy No. 44,916-Y

In the Matter of

RUTH VENA JOHNSON, aka RUTH BOYCE,
Bankrupt,

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND ORDER REVERSING REF-
EREE'S ORDER

The above-entitled matter coming on for hearing on April 30, 1951, on review of the order of Referee Benno M. Brink, quieting title to real property situated in the County of Los Angeles and State of California, and described as

Lot 4, in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County,

said review having been petitioned for by the bankrupt, Ruth Vena Johnson, and the Referee having filed his certificate on review herein, and the petitioner on review, the bankrupt, appearing by her attorney, Joseph Mayer, and the Trustee appearing by his attorney, Thomas S. Tobin, and the matter having been argued and briefs having been filed, and the Court [115] having written and filed its opinion on said review, now makes the following findings of fact:

Findings of Fact

I.

That on November 18, 1944, the bankrupt recorded a declaration of homestead on said real property in the office of the County Recorder of Los Angeles County, State of California.

II.

The Court finds that on December 2, 1944, the bankrupt executed a deed of gift to her daughter, Gladys Venes, and her daughter's children; that she recorded this deed on December 29, 1944, in the office of the County Recorder of the State of California; that in said deed the bankrupt reserved the right to occupy the premises during the life of herself and husband.

III.

The Court finds that on December 14, 1944, the bankrupt executed another grant deed to the same property to her daughter and that the same was recorded on January 16, 1945; that bankrupt continued to occupy said premises until trustee took possession thereof.

IV.

The Court finds that on April 24, 1947, the bankrupt, Ruth Vena Johnson, filed her voluntary petition in bankruptcy in this Court and was adjudicated a bankrupt; that coincidental with the filing of said petition, the bankrupt filed and swore to her schedules in bankruptcy; that in said schedules

the bankrupt swore in Schedule B-1 that she had no real estate, and in Schedule B-5 she claimed no property as exempt.

V.

The Court finds that George Gardner was the duly appointed, qualified and acting Trustee in bankruptcy of the bankrupt estate of Ruth Vena Johnson; that in the course of the [116] administration of the estate, the Trustee, on October 28, 1947, instituted an action in this court to avoid the conveyance. After trial, the court, Judge William C. Mathes, found that the execution of the instruments was without fair consideration and in fraud of the creditors then existing and future creditors, in violation of Section 70(e) of the Bankruptcy Act of 1938, and Sections 3439.02, 3439.03, 3439.04 and 3439.07 of the Civil Code of California. Specifically the Court's findings referred to the fact that the conveyance was to defraud Harry V. Mooney, one of the creditors in this proceeding, to whom, on December 2, 1944, she was indebted in the sum of \$10,000.00 or more.

(Findings VIII and XI.)

A judgment was entered on February 10, 1949, setting aside the conveyances as "fraudulent and void as to the creditors of the defendant, * * * and as to George Gardner, her trustee in bankruptcy."

The bankrupt did not set up the homestead right in her Answer and the Court, in the decree, made no adjudication as to its validity. The decree has become final.

VI.

The Court finds that on November 9, 1950, the Referee upon the petition of the trustee issued an Order requiring the bankrupt, and others, to appear and show cause before said Referee on December 14, 1950, and then and there establish any right, title, interest, lien or claim in their favor to real property situate within the County of Los Angeles and State of California, described as:

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per Map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of [117] the County Recorder of said County,

and show cause why the trustee should not be decreed to be the owner of said real property free and clear of any right, title, interest, lien, claim, or homestead right therein, and why the trustee should not be authorized to sell said real property for the benefit of the bankrupt estate, and the

Referee Further Ordered, that any of the respondents seeking recognition of any right, title, interest, lien or claim in their favor against said real property, file their answer in writing with this Court, asserting their right, title, interest, lien or claim thereto at least five (5) days prior to the date of hearing thereon.

The Court finds that the aforesaid order was served upon the bankrupt in the California Institute for Women at Tehachapi where she was then

and at all times since has been and still is confined.

The Court finds that the bankrupt in response to the aforesaid Order, as set out in the Certificate of the Referee, did file on December 11, 1950, an instrument captioned "Claim to Homestead Exemption," and on January 6, 1951, a further instrument captioned Homestead Exemption Claim, in which the bankrupt claimed an exemption of \$7,500.00 by reason of her homestead declaration.

VII.

The Court finds that on February 14, 1951, after a hearing upon an Order to Show Cause why the title of the trustee to the property should not be quieted against the bankrupt and others, the Referee made an order declaring that George Gardner, as Trustee in Bankruptcy, was the owner of the property on which the homestead had been filed, free and clear of any right, title and interest asserted by the bankrupt.

Based on the foregoing findings of fact, the [118] Court makes the following:

Conclusions of Law

I.

The Court concludes that the declaration of homestead filed by the bankrupt on November 18, 1944, was not affected by the bankrupt's attempts to deed the property to her daughter. The attempted conveyances having been set aside, the property is in the same status it had before the deed was executed, i.e., subject to the burden of the homestead.

II.

The Court concludes that the 1938 amendment to Section 6 of the National Bankruptcy Act does not stand in the way of recognizing the homestead rights of the bankrupt.

III.

The Court concludes that the attempted conveyance by the bankrupt to her daughter of said real property did not operate as an abandonment of her homestead under the provisions of Section 1243 of the California Civil Code.

IV.

The Court concludes that by the filing of said petition of the Trustee, the issuing of the said Order to Show Cause, and the response thereto of the bankrupt and other respondents, the bankrupt's right to said homestead was put in issue in the bankruptcy proceeding.

That the Order of the Referee referred to in the next paragraph (V.) adjudicated said right and the said matter is before this Court for final determination as an adjudication of said homestead right asserted in bankruptcy court by the claimant under the homestead.

V.

The Court concludes that the bankrupt is entitled to a homestead exemption in said property to the extent of [119] the amount allowed by Section 1260 of the Civil Code of California, or the sum of \$7,500.00.

And based on the foregoing findings of fact and conclusions of law, makes the following order:

Ordered that Paragraph I, on page 4, line 30 of the finding of fact in the Order of the Referee entered herein on the 14th day of February, 1951, reading as follows:

“nor did the Bankrupt make any attempt to claim the same as exempt”;

and that line 15 on page 5 reading as follows:

“reference and constitute the muniment of title of the Trustee,” [120]

be and the same are hereby stricken.

It is furthered Ordered that Paragraph IV, on page 7, of the conclusions of law in said order reading as follows:

“The Court concludes that none of the respondents herein have any right, title, interest, lien, or claim against said real property, valid as against the Trustee, save and except the lien of the respondent Bank of America Trust and Savings Association in the sum of \$67.00, as described in Paragraph III of the findings of fact.”

be and the same is hereby stricken and the following conclusion of law is hereby substituted therefor:

“The Court concludes that none of the respondents herein have any right, title, interest, lien or claim against said real property, valid

as against the Trustee save and except the lien of the respondent Bank of America Trust and Savings Association in the sum of \$67.00, as described in Paragraph III of the fact, and save and except the lien of the respondent Harry V. Mooney in the sum of \$10,970.64, as described in Paragraph VI of the findings of fact, subject to the homestead exemption of the bankrupt, Ruth Vena Johnson, aka Ruth Boyce, and her homestead exemption rights in said property.”

It is further Ordered that Paragraph V, on pages 7 and 8 of the conclusions of law in said order reading as follows:

“The Court concludes that George Gardner, as Trustee in bankruptcy for the estate [121] of Ruth Vena Johnson, aka Ruth Boyce, bankrupt, is the owner of said real property free and clear of any claims or liens asserted by any of the respondents hereto, save and except the lien of the Bank of America National Trust and Savings Association in the sum of \$67.00, and that the Trustee should be authorized to sell the same for the benefit of the bankrupt estate.”

be and the same is hereby stricken, and the following conclusion of law be and the same is hereby substituted therefor:

“The Court concludes that George Gardner, as Trustee in bankruptcy for the estate of Ruth Vena Johnson, aka Ruth Boyce, bankrupt, is

the owner of said real property free and clear of any claims or liens asserted by any of the respondents hereto, save and except the liens of the Bank of America National Trust and Savings Association in the sum of \$67.00, and of Harry V. Mooney in the sum of \$10,970.64, and that the Trustee should be authorized to sell the same for the benefit of the bankrupt estate, subject to the homestead exemption of the bankrupt, Ruth Vena Johnson, aka Ruth Boyce, and her rights in said property."

It is finally Ordered that that portion of said order reading as follows:

"Based on the Foregoing Findings and Conclusions, the Court Makes the Following Order:

"Now on motion of Thomas S. Tobin, attorney for the Trustee, it is [122]

"Ordered, Adjudged and Decreed:

"That George Gardner, Trustee in bankruptcy for the estate of Ruth Vena Johnson, aka Ruth Boyce, is the owner of real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as:

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California as per map recorded in Book 88, pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said County,

free and clear of any right, title, interest, lien or claim against the same, asserted by any of the respondents herein, save and except a lien based on an abstract of judgment in the sum of \$67.00 held by respondents Bank of America National Trust and Savings Association, as described in Paragraph III of the findings herein, which lien of the trustee is authorized and directed to pay.”

be and the same is hereby stricken and the following be and the same is hereby substituted therefor:

“Based on the Foregoing Findings of Fact and Conclusions of Law the Court Orders, Adjudges and Decrees as Follows:

“That George Gardner, Trustee in Bankruptcy for the estate of Ruth Vena Johnson, aka Ruth Boyce, is the owner of real property situate in the City of Los Angeles, County of Los Angeles, State of California, [123] described as:

Lot 4 in Block 29 of Tract No. 7555, in the City of Los Angeles, County of Los Angeles and State of California, as per map recorded in Book 88, pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of said

County;

free and clear of any right, title, interest, lien or claim against the same, asserted by any of the respondents herein, save and except a lien based on an abstract of judgment in the sum of

\$67.00 held by respondent Bank of America National Trust and Savings Association, as described in Paragraph III of the findings herein, and save and except a lien based on an abstract of judgment in the sum of \$10,970.64 held by respondent Harry V. Mooney, as described in Paragraph VI of the findings herein, which liens the Trustee is authorized and directed to pay, subject to the homestead exemption of the Bankrupt, Ruth Vena Johnson, aka Ruth Boyce, and her rights in said property in the sum of \$7,500.00.”

Done at Los Angeles, in the Southern District of California, this 31st day of May, 1951.

/s/ LEON R. YANKWICH,
United States District Judge.

Approved as to Form Under Local District Rule:

/s/ THOMAS S. TOBIN,
Attorney for Trustee.

Order entered June 1, 1951, U.S.D.C.

[Endorsed]: Filed May 31, 1951. U.S.D.C. [124]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

NOTICE OF APPEAL

To the Clerk of the Above-Named Court, and to
Ruth Vena Johnson Also Known as Ruth

Boyce, and to Joseph Mayer, 450 North Beverly Drive, Beverly Hills, California, Her Attorney:

Notice Is Hereby Given that George Gardner, as Trustee in bankruptcy for the above-named bankrupt estate, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the findings of fact and conclusions of law and order reversing Referee's order entered in this Court on June 1, 1951, in Judgment Book 72, Page 732, and from the holder thereof.

Dated at Los Angeles, Southern District of California, this 5th day of June, 1951.

/s/ THOMAS S. TOBIN,
Attorney for Trustee and
Appellant.

[Endorsed]: Filed June 6, 1951, U.S.D.C. [125]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

POINTS ON WHICH APPELLANT
INTENDS TO RELY ON APPEAL

Point I.

That the District Judge erred in reversing the order of Referee Benno M. Brink, quieting title to the real property in controversy as against the bankrupt.

Point II.

That the District Judge erred in refusing to affirm the order of the Referee quieting title to the real property in controversy in favor of the Trustee and against the bankrupt, and denying the bankrupt a homestead exemption herein.

Point III.

That the District Judge erred in concluding that the 1938 amendment to Section 6 of the National Bankruptcy Act does not stand in the way of recognizing the homestead rights of the bankrupt in and to said real property.

Point IV.

That the District Judge erred in allowing the bankrupt a [126] homestead exemption of \$7500.00 in said real property based on a declaration of homestead recorded on November 18, 1944, at a time when the State law of California permitted a homestead exemption to the head of a family in the sum of only \$5000.00, there being no evidence that any subsequent declaration of homestead was filed by the bankrupt.

Point V.

That the District Judge erred in holding that the bankrupt was entitled to exemptions out of property which she had transferred or concealed and which had been recovered, and the transfer of which was avoided under this Act for the benefit of the estate in direct contravention of the provi-

sions of Section 6 of the National Bankruptcy Act as amended in 1938.

Point VI.

That the District Judge erred in ignoring the decree of Judge William C. Mathes of the United States District Court for the Southern District of California, Central Division, entered February 10, 1949, avoiding the fraudulent conveyance by the bankrupt of this property, which decree had been affirmed by this Court, petition for writ of certiorari denied by the Supreme Court of the United States, and in which the mandate of this Court was on file, and which proceedings were in evidence in the above-entitled matter by reference, including pleadings, findings of fact, conclusions of law, decree and mandate.

Point VII.

That the District Judge erred in concluding that the declaration of homestead filed by the bankrupt on November 18, 1944, was not affected by the bankrupt's attempts to deed the property to her daughter, and that the setting aside of said fraudulent conveyance left the property in the same status as it had been before the deed was executed subject to the burden of the homestead, and in concluding that her attempted conveyance to her [127] daughter did not operate as an abandonment of her homestead under the provisions of Section 1243 of the California Civil Code.

Point VIII.

That the District Judge erred in not concluding that the bankrupt was estopped from claiming any exemption in said property by virtue of the decree of Judge William C. Mathes of February 10, 1949, decreeing that the Trustee was the owner of said property in an action in which the bankrupt was a party and was appellant in this Court, and which decree had long since become final.

Dated: June 5, 1951.

/s/ THOMAS S. TOBIN,
Attorney for Trustee and
Appellant.

[Endorsed]: Filed June 6, 1951. U.S.D.C. [128]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

DESIGNATION OF PARTS OF THE
RECORD ON APPEAL

To Edmund L. Smith, Clerk of the Above-Named
Court:

You will please prepare record on appeal in the above-entitled matter and include therein the following documents:

1. Voluntary petition in bankruptcy of Ruth Vena Johnson in case No. 44,916-Y.
2. Order of adjudication.

3. Bankrupt's schedules dated April 23, 1947, including only Schedule B-1, Real Estate; B-4, Property in Reversion, Remainder, Expectancy or Trust; B-5, Property Claimed as Exempt, with a statement that same was verified April 23, 1947, before Milton M. Cohen, Jr., Notary Public.

4. Order of adjudication and of general reference.

5. Order approving Trustee's bond.

6. Amended complaint to avoid fraudulent conveyances of real property, in action No. 7723-WM.

7. Answers of the defendants to the amended complaint [129] in action No. 7723-WM.

8. Findings of fact and conclusions of law, action No. 7723-WM.

9. Decree of Judge Mathes in action No. 7723-WM.

10. Mandate of United States Court of Appeals for the Ninth Circuit, affirming decree in action No. 7723-WM.

11. Petition for order to show cause quieting title to real property in action No. 44916-Y.

12. Order to show cause issued thereunder.

13. Answer of bankrupt to order to show cause.

14. Referee's findings of fact, conclusions of law and his order quieting title to real property.

15. Bankrupt's petition for review of Referee's order quieting title to real property.

16. Referee's certificate on review.
17. Findings of fact and conclusions of law and order reversing Referee's order, District Judge Yankwich.
18. Notice of appeal.
19. Points on which appellant intends to rely on appeal.
20. This designation.

/s/ THOMAS S. TOBIN,
Attorney for Appellant.

[Endorsed]: Filed June 6, 1951. [130]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Ruth E. Spangler, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States over the age of twenty-one years, and not a party to the above-entitled matter, or interested therein.

That on the 6th day of June, 1951, she deposited a copy of Notice of Appeal, Points on which Appellant intends to Rely, and Designation of Parts of

the Record on Appeal in an envelope addressed to the following:

Joseph Mayer,
450 North Beverly Drive,
Beverly Hills, California;

and after carefully sealing said envelope so containing said copy as aforesaid, and after affixing thereon the postage required by law, she deposited said envelope in the United States Post Office at Los Angeles, California; that there is a regular communication by mail from said Post Office of deposit to the place so addressed.

/s/ RUTH E. SPANGLER.

Subscribed and Sworn to before me this 6th day of June, 1951.

[Seal] /s/ C. W. ROBINSON,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires August 16, 1952.

[Endorsed]: Filed June 7, 1951. [131]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

APPELLANT'S SUPPLEMENTAL DESIGNA-
TION OF PARTS OF THE RECORD ON
APPEAL

To Edmund L. Smith, Clerk of the Above-Named
Court:

The undersigned appellant hereby supplements his original designation of parts of the record on appeal and requests that you send up the following documents in the above-entitled action:

1. Trustee's report of exempt property (with Referee Brink).

2. Order of Referee approving Trustee's report of exempt property.

3. This supplemental designation.

In preparing the record, with the exception of the voluntary petition in the matter of Ruth Vena Johnson, bankrupt, all subsequent documents in that bankruptcy proceeding may be captioned only "Title of Court and Cause."

Any exhibits in the case of Gardner, Trustee, vs. Venes, et al., received in evidence by reference after the amended answer in said action which should contain the names of all defendants [132] named therein, may be captioned only with the case number and "Gardner vs. Venes, et al."

Dated this 13th day of June, 1951.

/s/ THOMAS S. TOBIN,
Attorney for Appellant.

[Endorsed]: Filed June 14, 1951. [133]

[Title of District Court and Cause.]

In Bankruptcy No. 44,916-Y

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Ruth E. Spangler, being first duly sworn, on oath,

deposes and says: That she is a citizen of the United States over the age of twenty-one years, and not a party to the above-entitled matter, or interested therein.

That on the 13th day of June, 1951, she deposited a copy of Appellant's supplemental designation of parts of the record on appeal in an envelope addressed to the following:

Mr. Joseph Mayer,
Attorney at Law,
450 North Beverly Drive,
Beverly Hills, California;

and after carefully sealing said envelope so containing said copy as aforesaid, and after affixing thereon the postage required by law, she deposited said envelope in the United States Post Office at Los Angeles, California; that there is a regular communication by mail from said Post Office of deposit to the place so addressed.

/s/ RUTH E. SPANGLER.

Subscribed and Sworn to before me this 13th day of June, 1951.

[Seal] /s/ C. W. ROBINSON,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 16, 1952.

[Endorsed]: Filed June 14, 1951. [134]

In the District Court of the United States, Southern
District of California, Central Division

Civil No. 7,723-B

GEORGE GARDNER as Trustee in Bankruptcy
for the Estate of Ruth Vena Johnson, Also
Known as Ruth Boyce, Bankrupt,

Plaintiff,

vs.

GLADYS VENES, RUTH VENA JOHNSON,
Also Known as **RUTH BOYCE; FRANK**
VENES, JR., a Minor; **RUTH VENES,** a
Minor; **MARY JANE VENES,** a Minor, and
GLADYS VENES as Guardian Ad Litem for
Said Minors,

Defendants.

**AMENDED COMPLAINT TO AVOID FRAUD-
ULENT CONVEYANCES OF REAL PROP-
ERTY. BANKRUPTCY ACT SEC. 70-e.
CIVIL CODE OF CALIFORNIA SEC. 3439.-
02-04-05-06-07**

Comes Now plaintiff and pursuant to Order of
the Court and Stipulation, files his Amended Com-
plaint and complains of the defendants and alleges:

I.

That on April 24, 1947, Ruth Vena Johnson, also
known as Ruth Boyce, who will hereafter be re-
ferred to as the bankrupt or Ruth Vena Johnson,
filed her voluntary petition in bankruptcy in the
United States District Court for the Southern Dis-

trict of California, Central Division, praying she be adjudged a bankrupt within the purview of Section 4, Subdivision-a of the National [135] Bankruptcy Act; that such proceedings were had; that on April 24, 1947, she was duly adjudicated a bankrupt by said court and thereafter, on May 12, 1947, at the first meeting of creditors had and held before Honorable Benno M. Brink, one of the Referees in Bankruptcy for the District aforesaid, George Gardner, plaintiff herein, was appointed trustee, filed his bond and qualified as such trustee, and at all times since May 12, 1947, has been and now is the duly appointed, qualified and acting trustee in bankruptcy herein for the Estate of Ruth Vena Johnson, also known as Ruth Boyce.

II.

That at all times herein mentioned the bankrupt and defendant herein, Ruth Vena Johnson, was a resident and citizen of the City of Los Angeles, County of Los Angeles, and State of California, and that the plaintiff herein is likewise a resident and citizen of the City of Los Angeles, County of Los Angeles, and State of California.

III.

That at all times herein mentioned the defendants, Gladys Venes, Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, were residents and citizens of Scotch Plains in the State of New Jersey; that the real property hereinafter

described is situated in the City of Los Angeles, County of Los Angeles and Southern District of California; that the defendants Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, and each of them, are minors under the age of 21 years, and that during the pendency of this proceeding an Order was made by the above-entitled Court appointing their mother, the defendant, Gladys Venes, as Guardian Ad Litem for said minor defendants, and each of them. [136]

IV.

That this is an action brought under the provisions of Section 70-e of the National Bankruptcy Act, 11 U.S.C.A. Section 110-e, and the Uniform Fraudulent Conveyance Act of the State of California which was in force and effect at the time of the acts herein complained of.

V.

Plaintiff alleges that prior to December 2, 1944, the bankrupt, Ruth Vena Johnson, also known as Ruth Boyce, was the owner of certain real property situated in the City of Los Angeles, County of Los Angeles and State of California, described as:

“Lot 4 in Block 29, Tract 7555 as per Map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of Los Angeles County, State of California.”

the same having been conveyed to her on Novem-

ber 13, 1944, as her separate property by Loren W. O'Dell and Grace L. O'Dell, and said Deed recorded in the office of the County Recorder of Los Angeles County, State of California.

VI.

That theretofore on April 15, 1944, the bankrupt, who was a married woman, had entered into a property settlement agreement in writing with her husband Walter G. Johnson in contemplation of divorce proceedings which property settlement agreement provided among other things that all property thereafter acquired by either the said Walter G. Johnson or the bankrupt, his wife, should be and remain their respective separate properties, and on November 10, 1944, the said Walter G. Johnson, also known as Walter George Johnson, executed and delivered to the bankrupt a deed to the above-described real property, quitclaiming any interest he might possibly be entitled to [137] therein.

VII.

Plaintiff alleges that on December 2, 1944, the bankrupt was about to engage in business and transactions for which the property remaining in her hands after the conveyance hereinafter complained of would be an unreasonably small capital, namely, engaging in speculative real estate transactions, the operation of a so-called college for real estate brokers and salesmen and litigation with her former husband, Walter G. Johnson,

involving business transactions between them; that in connection with said business ventures the bankrupt was about to incur and did incur large indebtednesses totaling in excess of \$58,000.00, with total net assets after the conveyance herein complained of on which the trustee and creditors could realize amounting to less than \$2,000.00.

VIII.

That on December 2, 1944, while the defendants, Gladys Venes, Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, were outside of the State of California, the bankrupt, Ruth Vena Johnson, made, executed and recorded a Deed of Gift in favor of the defendant, Gladys Venes, and her children, whereby she transferred and conveyed the real property hereinbefore described to the said defendant, Gladys Venes, and her children, as a gift; that the children meant to be named in said Deed of Gift were the defendants, Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, the minor defendants herein; that thereafter on December 14, 1944, the bankrupt made, executed and delivered a Grant Deed to the same real property to the defendant, Gladys Venes, who is her daughter; that coincidental with the execution of said Deeds, or shortly thereafter, the bankrupt, Ruth Vena Johnson, obtained from her daughter, Gladys Venes, a general Power of Attorney running to her; that purporting to act under said general Power of Attorney, after the execution and

recordation of said Deeds of December 2, 1944, and December 14, 1944, the bankrupt and defendant, Ruth Vena Johnson, [138] proceeded to and did continuously thereafter, collect and appropriate to her own use and benefit, the rental income from said real property, amounting to the sum of \$75.00 per month and continued to manage and operate said real property the same as though it were her own.

IX.

That at the time of said transfers herein complained of, the defendant, Ruth Vena Johnson, was indebted to creditors who are creditors in her bankruptcy proceeding; that she was anticipating litigation in connection with indebtednesses which she owed prior to December 2, 1944; that subsequent to said transfer she incurred other indebtednesses and now owes creditors, some of who hold judgments against her, the sum total of approximately \$58,000.00; that the only assets realizable, so far as the plaintiff is able to ascertain, do not amount to over \$2,000.00; that the transfer of said real property had the effect of rendering the bankrupt hopelessly insolvent.

X.

That said transfer was made by the bankrupt and defendant, Ruth Vena Johnson, to the defendants, and each of them, without a fair consideration, there being no consideration whatsoever paid to said bankrupt at the time of said transfer, the purported consideration for said transfer being the fact that the bankrupt back in the year of 1918

had had about \$8,000.00 in money, consisting of currency, in a trunk in her house in Charlotte, North Carolina, which she and her then husband, Robert Starns, had accumulated and kept in said trunk, and which by verbal agreement between the bankrupt and her then husband, Robert Starns, was at some future time to be used for the education of the defendant, Gladys Venes, who was then a baby about eighteen months old; that said Robert Starns thereafter died; that said alleged sum of \$8,000.00 was never probated nor insofar as the plaintiff can ascertain, ever appeared of record in any way, shape or manner, but according to the defendant, Ruth Vena [139] Johnson, was secreted in said trunk and spent by her; that said oral agreement between the said bankrupt and her then husband, Robert Starns, was the sole consideration for the transfer of the real property herein complained of and was actually made by the bankrupt to the defendants, and each of them, without a fair consideration, and was made by the said bankrupt and accepted by the defendant, Gladys Venes, with intent to hinder, delay or defraud creditors, both present and future, as of the time of said conveyance.

XI.

That as to creditors of said bankrupt existing both before and after said transfer, and as to the plaintiff as trustee in bankruptcy for the said Ruth Vena Johnson, bankrupt, said conveyance of said real property constituted a fraud, and the plaintiff, as trustee in bankruptcy for the said Ruth

Vena Johnson, is actually the owner of said real property and entitled to possession thereof.

Wherefore, plaintiff prays judgment against the defendants as follows:

1. That the attempted conveyances of the real property hereinbefore described dated December 2, 1944, and December 14, 1944, be decreed by this court to be fraudulent and void and of no force and effect as against plaintiff herein as trustee in bankruptcy for the estate of Ruth Vena Johnson, also known as Ruth Boyce, Bankrupt, and as to creditors of the said Ruth Vena Johnson, also as Ruth Boyce.

2. That by decree of this court the deeds hereinbefore described be ordered cancelled of record and the record title in and to said real property be vested in the plaintiff as trustee in bankruptcy for the estate of Ruth Vena Johnson, also known known as Ruth Boyce.

3. That the defendant, Ruth Vena Johnson, also known as Ruth Boyce, be required to account to the plaintiff as trustee in bankruptcy for all rents, issues and profits collected from said [140] real property after the effective date of said conveyance or conveyances and used by her, and that a money judgment be rendered against the said defendant, Ruth Vena Johnson, also known as Ruth Boyce, in favor of the plaintiff herein for such amount or amounts as may be determined by this court to have been so used by said Ruth Vena Johnson, also known as Ruth Boyce.

4. That the plaintiff have and recover his costs and disbursements herein, and that he be given such other and further relief as the court may deem just and equitable in the premises.

/s/ THOMAS S. TOBIN,
Attorney for Plaintiff.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 21, 1948. [141]

[Title of District Court and Cause.]

Civil No. 7,723-B

ANSWERS OF THE DEFENDANTS TO THE
AMENDED COMPLAINT

Comes now the defendants and each of them and appears herein and answers the amended complaint on file herein and for answer, deny, admit and allege as follows, to wit:

I.

Answering paragraph VII, these defendants deny that on December 5, 1944, the defendant, Ruth Johnson, was about to engage in any business or any business transactions, and deny that property in her hands after the conveyance complained of in the complaint would be an unreasonably small capital and in that connection alleges that at the time of the making of the conveyance of the real property referred to in plaintiff's complaint, Ruth John-

son [144] was confined in a hospital at Los Angeles, California, and was not in business and that she had, in addition to the real property described in plaintiff's complaint at said time, in currency and in bonds of the United States of America a sum in excess of Ten Thousand (\$10,000) Dollars; that with respect to all of the balance of the allegations in paragraph VII, these defendants deny each, every and all thereof, both generally and specially.

II.

Answering paragraph IX, these defendants deny that at the time of the conveyance of the real property referred to in plaintiff's complaint, Ruth Johnson was indebted to any creditor or creditors who are creditors in her present bankruptcy proceeding; deny that she was anticipating litigation in connection with any indebtedness which she owed upon or prior to December 5, 1944; admits that she incurred indebtedness after December 5, 1944, but denies the same is the sum of Fifty-Eight Thousand (\$58,000.00) Dollars, but alleges that some of the claims filed against her in the bankruptcy proceeding are fictitious and will be contested by her successfully; denies that the transfer of the real property referred to in plaintiff's complaint had the effect of rendering her insolvent or hopelessly insolvent.

III.

Answering paragraph X of the Amended Complaint, these defendants deny that the transfer of the real property was without consideration and

was without a fair consideration and deny that the only consideration was the one recited in paragraph X of the plaintiff's Amended Complaint; deny that the conveyance of the said real property was made by Ruth Johnson and accepted by the other defendants with any intent to hinder, delay or to defraud creditors of the defendants, or any of them then existing or to exist in the future. These defendants other than herein expressly admitted, deny the allegations of paragraph X of the first Amended Complaint. [145]

IV.

Answering paragraph XI, these defendants deny each, every and all of the allegations thereof both generally and specially and deny that Ruth Johnson is actually the owner of the real property.

V.

And as a separate and distinct defense to plaintiff's first Amended Complaint and the cause of action therein sought to be set up, these defendants allege that on December 5, 1944, and on December 29, 1944, Ruth Johnson was solvent and after the conveyance made of the real property complained of in plaintiff's complaint, was still solvent and that no creditor came into being as a creditor of Ruth Johnson after December 29, 1944, extended any credit to Ruth Johnson by virtue of her ownership of the real property set forth in plaintiff's complaint and in that regard, alleges that the real property described in paragraph V of plaintiff's

complaint, stood in the name of these answering defendants other than Ruth Johnson, of record in the Office of the County Recorder of Los Angeles County, first on December 5, 1944, and again by deed dated December 29, 1944, and that said recordation of said deeds was noticed to the world and to all persons who later dealt with Ruth Johnson that Ruth Johnson was not the owner of said real property and was not entitled to use said real property as a basis of credit. These defendants allege that no existing creditor of Ruth Johnson ever extended any credit to her or dealt with her or entered into any agreement under which Ruth Johnson obligated herself to pay money to any existing creditor by virtue of any ownership of record or otherwise in Ruth Johnson of the real estate described in paragraph V of plaintiff's Amended Complaint.

Wherefore, these defendants, other than Ruth Johnson, pray that this court decree and determine the title to the real [146] property, the subject matter of this action, is vested in these defendants and all of the defendants pray that plaintiff take nothing by his action and that these defendants have judgment for their respective costs herein extended and incurred.

/s/ RUPERT B. TURNBULL,

Attorney for the Defendants.

Duly verified.

[Endorsed]: Filed February 10, 1948. [147]

[Title of District Court and Cause.]

Civil No. 7,723-B

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above action coming on for hearing commencing on November 23, 1948, and having been partially tried, and having been continued from time to time until February 1, 1949, the plaintiff appearing in person and by his attorney, Thomas S. Tobin, and the defendant, Ruth Vena Johnson, also known as Ruth Boyce, appearing In Propria Persona, and the defendant, Gladys Venes, and the minor defendants, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes, and Judith Venes, and Gladys Venes as guardian ad litem for said minors, together with the defendant, Ruth Vena Johnson, individually, having entered their appearance by Rupert B. Turnbull, an attorney, a member of the bar of this court, and having filed their answer to the plaintiff's amended complaint to avoid fraudulent conveyance [149] of real property under Section 70-E of the Bankruptcy Act, and the Civil Code of California, Sections 3439.02-04-05-06-07, and upon said cause being called for trial, the defendants herein having discharged Rupert B. Turnbull as their attorney, and the defendant, Ruth Vena Johnson, having stated in open court that she wished to defend in propria persona, and Rupert B. Turnbull having been discharged from further attendance at said trial, and testimony having been taken, evi-

dence and numerous exhibits received and considered by the court, together with the depositions of witnesses, and the cause having been argued by counsel for the plaintiff and by the defendant, Ruth Vena Johnson, and the cause submitted; now, on motion of Thomas S. Tobin, attorney for the plaintiff, the Court now makes and enters the following:

Findings of Fact

I.

The court finds that on April 24, 1947, Ruth Vena Johnson, also known as Ruth Boyce, one of the defendants herein, filed her voluntary petition in bankruptcy in the United States District Court, Southern District of California, Central Division, praying that she be adjudged a bankrupt within the purview of Section 4, subdivision a, of the National Bankruptcy Act. That on April 24, 1947, she was adjudicated a bankrupt by said United States District Court. That on May 12, 1947, at the first meeting of creditors had and held before the Honorable Benno M. Brink, one of the referees in bankruptcy for the district aforesaid, George Gardner, the plaintiff herein, was appointed Trustee, filed his bond and qualified as such trustee, and at all times since May 12, 1947, has been and now is the duly appointed, qualified and acting Trustee in Bankruptcy for the Estate of Ruth Vena Johnson, also known as Ruth Boyce. [150]

II.

The court finds that at the time of the filing of said petition, the bankrupt, Ruth Vena Johnson, was a resident and citizen of the City of Los Angeles, County of Los Angeles, State of California, and that the plaintiff is likewise a resident and citizen of the City of Los Angeles, County of Los Angeles, State of California.

III.

The court finds that the defendant, Ruth Vena Johnson, is not a member of the bar of the District Court of the United States, but is and was engaged in the business of a real estate broker and in the operation of a real estate school.

IV.

The court finds that all times mentioned in the amended complaint of the plaintiff, the defendants, Gladys Venes, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes and Judith Venes were residents and citizens of Scotch Plains in the State of New Jersey. That the real property hereinafter described is situated in the City of Los Angeles, County of Los Angeles, and Southern District of California. That the defendants, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes and Judith Venes, and each of them, are minors under the age of 21 years, and that during the pendency of this proceeding an order was made by this court appointing the defendant, Gladys Venes, as Guardian ad litem for said minors, and each of them.

V.

The court finds that at the time of the trial of the above-entitled action, none of the defendants, except the defendant, Ruth Vena Johnson, appeared in court or offered any evidence on their behalf.

VI.

The court finds that prior to December 2, 1944, the [151] defendant, Ruth Vena Johnson, also known as Ruth Boyce, was the owner of certain real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as Lot 4, Block 29, Tract 7555, as per Map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the Office of the County Recorder of Los Angeles County, State of California, the same having theretofore been conveyed to her as her separate property by Loren W. O'Dell and Grace L. O'Dell, which said deed was recorded in the office of the County Recorder of Los Angeles County, State of California.

VII.

The court finds that theretofore, on April 15, 1944, the bankrupt was a married woman; that she had entered into a property settlement agreement in writing with her husband, Walter G. Johnson, in contemplation of a divorce proceeding, which property settlement agreement provided, among other things, that all property acquired thereafter by either of the said Walter G. Johnson or Ruth Vena Johnson, his wife, should be and remain their re-

spective separate properties. That on November 10, 1944, the said Walter G. Johnson, also known as Walter George Johnson, executed and delivered to the defendant a deed to the above-described real property, quit-claiming any interest he might have or be entitled to therein.

VIII.

The court finds that on December 2, 1944, the bankrupt was indebted to one, Harry V. Mooney, of San Francisco, California, in the sum of \$10,000.00 or more. That approximately sixty days thereafter suit was instituted against her in the Superior Court of the State of California in and for the County of San Francisco, by the said Harry V. Mooney, and a judgment obtained after a contested trial by the said Harry V. Mooney against the bankrupt defendant, Ruth Vena Johnson, in the sum of Ten Thousand (\$10,000.00) Dollars, together with interest and costs. [152]

IX.

The court finds that on December 2, 1944, while the defendants, Gladys Venes, Frank Venes, Jr.; Ruth Venes, Mary Jane Venes and Judith Venes, were outside of the State of California and living in Scotch Plains, New Jersey, the defendant, Ruth Vena Johnson, for the purpose of hindering, delaying or defrauding her creditors, and particularly the creditor, Harry V. Mooney, made, executed and recorded in the Office of the County Recorder of

Los Angeles County, State of California, a Deed of Gift, whereby she purported to convey in consideration of love and affection to the defendant, Gladys Venes and her children, without naming them, the real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as Lot 4, Block 29, Tract 7555, as per Map recorded in Book 88, Pages 79 to 84, inclusive, of Maps, in the Office of the County Recorder of Los Angeles County, State of California. That said consideration of love and affection recited in said Deed of Gift was not fair consideration. That no fair consideration was paid or given to the bankrupt defendant, Ruth Vena Johnson, for said property by the defendant, Gladys Venes, or any of the minor defendants. That thereafter on December 14, 1944, the bankrupt defendant, Ruth Vena Johnson, made, executed and delivered another deed purporting to be a Grant Deed to the same real property to her daughter, the defendant, Gladys Venes, and obtained back from her daughter, Gladys Venes, a general Power of Attorney, permitting her to manage, to live in, and to collect the income from said real property for her own use and benefit. That said purported conveyances, and each of them, were made by the bankrupt defendant, Ruth Vena Johnson, voluntarily and for the purpose of hindering, delaying and defrauding her creditors, and particularly the creditor, Harry V. Mooney.

X.

That at the time of the bankruptcy the bankrupt,

Ruth [153] Vena Johnson, was indebted to numerous creditors in a sum approximating \$58,000.00; that the assets in the possession of the trustee, plaintiff herein, are grossly insufficient to pay the bankrupt defendant's liabilities in full.

XI.

The court finds that any other property owned by the bankrupt in an amount sufficient to pay the judgment obtained by the creditor, Harry V. Mooney, was concealed by the bankrupt either on her person or in the name of a corporation. That the bankrupt did not intend to pay the judgment or claim of the said Harry V. Mooney; that the same has not been paid and constitutes a claim in the bankruptcy administration of the estate of Ruth Vena Johnson, bankrupt, in this court.

XII.

The court finds that said transfers, and each of them, were made without a fair consideration, and that said transfers were accepted by the defendant, Gladys Venes, without the payment by her of any fair consideration, either on her own behalf, or on behalf of the minor defendants; and that said transfers constituted a fraud against both existing and future creditors of the said Ruth Vena Johnson, bankrupt defendant.

XIII.

The court finds that after said transfer, the defendant, Ruth Vena Johnson, collected and used the income from said property, partly for the mainte-

nance thereof, and partly for her own use and benefit, but that it would not be equitable to render judgment against her for the income after avoiding said transfers.

XIV.

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of [154] Law:

Conclusions of Law

I.

That this court has jurisdiction of the persons of the defendants and of the subject matter of this action, and over the real property hereinbefore described.

II.

That the real property situated in the County of Los Angeles, State of California, and Southern District thereof, described as Lot 4, Block 29, Tract 7555, as per Map recorded in Book 88, pages 79 to 84, inclusive, of Maps, in the office of the County Recorder of Los Angeles County, State of California, constitutes property transferred by the bankrupt in fraud of her creditors, and property which prior to the filing of the petition might have been levied upon and sold under judicial process against her or otherwise seized, impounded or sequestered, and under the provisions of Section 70-A of the National Bankruptcy Act was vested by operation of law in the plaintiff, George Gardner, as Trustee in Bankruptcy of the estate of Ruth Vena Johnson, bankrupt.

III.

That the transfers attempted to be made by the bankrupt defendant, Ruth Vena Johnson, on December 2, 1944, and December 14, 1944, to the defendants herein, and each of them, are fraudulent and void and of no force and effect as against the plaintiff as trustee in bankruptcy for the estate of Ruth Vena Johnson, bankrupt, and as to the creditors of the said Ruth Vena Johnson, bankrupt defendant, under the provisions of Section 70-E of the National Bankruptcy Act, and Sections 3439.02, 3439.03, 3439.04 and 3439.07 of the Civil Code of California; and that the deeds executed to said real property on December 2, 1944, and December 14, 1944, by the defendant bankrupt, Ruth Vena Johnson, to and for the benefit of the other defendants named herein, should be cancelled of record, and the record title to said real property vested in the plaintiff, as trustee in bankruptcy for the estate of Ruth Vena Johnson, also [155] known as Ruth Boyce, and administered in her bankrupt estate.

IV.

That the prayer of the plaintiff's petition for an accounting for rents, issues and proceeds collected from said real property by the defendant, Ruth Vena Johnson, after the effective date of said conveyance and used by her should be denied and no judgment rendered against her, the said Ruth Vena Johnson, except for costs.

Let judgment be entered accordingly.

Dated at Los Angeles in the Southern District of California, this 10th day of February, 1949.

/s/ WM. C. MATHES,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged February 4, 1949.

[Endorsed]: Filed February 10, 1949. [156]

In the District Court of the United States, Southern District of California, Central Division
Civil No. 7,723—WM

GEORGE GARDNER, as Trustee in Bankruptcy
for the Estate of RUTH VENA JOHNSON,
Also Known as RUTH BOYCE, Bankrupt,
Plaintiff,

vs.

GLADYS VENES, RUTH VENA JOHNSON,
Also Known as RUTH BOYCE, FRANK
VENES, JR., a Minor; RUTH VENES, a
Minor; MARY JANE VENES, a Minor, and
GLADYS VENES, as Guardian Ad Litem for
Said Minors,

Defendants.

JUDGMENT

The above-entitled action coming on for hearing before the undersigned judge of the above-entitled court on November 23, 1948, the plaintiff appear-

ing in person and by his attorney, Thomas S. Tobin, and the defendants having appeared and answered through their attorney, Rupert B. Turnbull, and an order having been made pursuant to a stipulation that Rupert B. Turnbull, attorney, entered his appearance as attorney for Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, minors, and consented that an order may be entered appointing their mother, Gladys Venes, as Guardian ad litem for them, and each of them, for the purpose of this litigation, and that the plaintiff might file an amended complaint including the minor defendants hereinbefore named; and [158] said amended complaint having been filed, and at the time of the trial of the above-entitled action, Rupert B. Turnbull having been discharged as attorney for all of the defendants; and the defendant, Ruth Vena Johnson, having appeared and conducted her case in propria persona, and the remainder of the defendants not appearing at the trial thereof or offering any evidence, and the cause having been argued, and the court having made and entered its Findings of Fact and Conclusions of Law herein, and being fully advised in the premises; now, on motion of Thomas S. Tobin, attorney for the plaintiff, it is,

Ordered, Adjudged and Decreed that the purported transfers attempted by the defendant, Ruth Vena Johnson, of the real property situated in the City of Los Angeles, County of Los Angeles, State of California, described as Lot 4, Block 29, Tract 7555, as per Map, recorded in Book 88, pages 79 to

84, inclusive, of Maps, in the office of the County Recorder of Los Angeles County, State of California, pretended to be made on December 2, 1944, and December 14, 1944, are fraudulent and void as to creditors of the defendant, Ruth Vena Johnson, and as to George Gardner, her Trustee in Bankruptcy, plaintiff herein, and that said conveyances, and each of them, should be cancelled of record, annulled and set aside.

It Is Further Ordered, Adjudged and Decreed that the plaintiff, George Gardner, as Trustee in Bankruptcy for the Estate of Ruth Vena Johnson, also known as Ruth Boyce, is the owner of and entitled to immediate possession of said real property.

It Is Further Ordered, Adjudged and Decreed that the defendants, Gladys Venes, Frank Venes, Jr., Ruth Venes, Mary Jane Venes and Judith Venes, and their guardian ad litem, Gladys Venes, have no right, title, interest, lien or claim in and to said real property.

It Is Further Ordered, Adjudged and Decreed that the plaintiff have and recover his costs and disbursements herein, to [159] be taxed and allowed according to law.

It Is Further Ordered, Adjudged and Decreed that no accounting for the rents, issues and proceeds of said real property be required of the defendants herein.

Done at Los Angeles in the Southern District of

California, this 10th day of February, 1949, at 12:50 p.m.

/s/ WM. C. MATHES,

United States District Judge.

Lodged February 4, 1949.

[Endorsed]: Filed February 10, 1949. [160]

MANDATE

United States of America—ss.

The President of the United States of America
To the Honorable, the Judges of the United States
District Court for the Southern District of
California, Central Division Greeting:

Whereas, lately in the United States District Court for the Southern District of California, Central Division, before you or some of you, in a cause between George Gardner, as Trustee in Bankruptcy for the Estate of Ruth Vena Johnson, also known as Ruth Boyce, bankrupt, plaintiff, and Gladys Venes, Ruth Vena Johnson, also known as Ruth Boyce; Frank Venes, Jr., a minor; Ruth Venes, a minor; Mary Jane Venes, a minor, and Gladys Venes, as Guardian ad litem for said minors, defendants, No. 7723-WM, a judgment was duly filed and entered on the 10th day of February, 1949, which said judgment is of record and fully set out in said cause in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof,

And Whereas, the said Ruth Vena Johnson, et al.,

appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 10th day of November, in the year of our Lord, one thousand nine hundred and forty-nine, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(December 28, 1949.) [161]

You, Therefore, are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States, the seventeenth day of April in the year of our Lord one thousand nine hundred and fifty.

[Seal]

PAUL P. O'BRIEN,

Clerk, United States Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed April 19, 1950. [162]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 162, inclusive, contain the original Debtor's Petition and Schedules in Bankruptcy; Orders of Adjudication and of General Reference; Bond of Trustee and Order Approving; Referee's Certificate on Petitions for Review of Order Quieting Title to Real Property and fifteen documents certified therewith by the Referee; Supplement to Referee's Certificate on Petitions for Review of Order Quieting Title to Real Property; Opinion on Petition for Review; Findings of Fact and Conclusions of Law and Order Reversing Referee's Order; Notice of Appeal; Points on Which Appellant Intends to Rely on Appeal; Designation of Parts of the Record on Appeal; Affidavit of Service; Supplemental Designation of Parts of the Record on Appeal; Amended Complaint to Avoid Fraudulent Conveyances of Real Property in Case No. 7723-B; Answers of the Defendants to the Amended Complaint in Case No. 7723-B; Findings of Fact and Conclusions of Law in Case No. 7723-B; Judgment in Case No. 7723-WM; Mandate in Case No. 7723-WM which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and

certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 12 day of July, A.D. 1951.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13009. United States Court of Appeals for the Ninth Circuit. George Gardner, as Trustee in bankruptcy for the estate of Ruth Vena Johnson, also known as Ruth Boyce, bankrupt, Appellant, vs. Ruth Vena Johnson, also known as Ruth Boyce, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 13, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13009

POINTS ON WHICH APPELLANT INTENDS
TO RELY AND DESIGNATION OF PARTS
OF THE RECORD TO BE PRINTED

To Paul P. O'Brien, Clerk of the Above-Named
Court:

The undersigned attorney for the appellant hereby adopts in this Court as points on which appellant intends to rely on appeal, the points on which appellant intends to rely on appeal in the District Court, Clerk's Record, pages 126 and 128, the same as though separately designated in this Court.

Designation of Parts of the Record To Be Printed

The undersigned attorney for the appellant hereby designates the parts of the record certified up by the Clerk of the District Court of the United States for the Southern District of California, as being the parts of the record to be printed on appeal in this Court, there being some portions of the Clerk's record not material on appeal in this proceeding and duplications.

1. Voluntary petition—Pg. 2*.

Please print caption in the voluntary petition but in all subsequent proceedings in the bankruptcy proceeding of Ruth Vena Johnson, omit the formal

*District Court Clerk's Record.

caption, merely designating it by number and "title of court and cause."

2. Summary of debts and assets—Pg. 3.

3. Schedule B-1, bankrupt's schedules in bankruptcy, Real Estate—Pg. 27.

4. Schedule B-4, Property in Reversion, Remainder, Trust and Expectancy—Pg. 32.

5. Schedule B-5, Property Claimed Exempt—Pg. 33.

6. Schedule B-6, Books, Deeds and Papers, also including oath to Schedule B—Pg. 34.

7. Orders of adjudication and special reference—Pg. 35.

8. Trustee's bond and approval thereof—Pg. 36.

9. Referee's certificate on petitions for review of order quieting title to real property—Pg. 37-43, incl.

10. Petition for order to show cause quieting title to real property—Pg. 44-51, incl.

11. Order to show cause—Pg. 52 to 56, incl.

12. Order authorizing service of process by private citizen—Pg. 57.

13. Affidavit of service on Walter G. Johnson and Ruth Vena Johnson—Pg. 61 and 62.

14. Application for extension of time to file answer, etc.—Pg. 63-66, incl.

15. Order continuing hearing on order to show cause in re certain real property—Pg. 67.

16. Homestead exemption claim—Pg. 68.

17. Order quieting title to real property—Pg. 70-77, incl.

18. Petition for order extending time to file petition for review—Pg. 78.

19. Order extending time within which to file petition for review of order quieting title to real property—Pg. 80.

20. Petition for review, including verification by bankrupt, Ruth Vena Johnson—Pg. 96-99, incl.

21. Supplement to Referee's certificate on petitions for review, etc. (Omit photostats of parts of schedules as they would duplicate parts of the schedules already designated in Nos. 3 to 6—Pg. 100-101, incl.

22. Opinion on petition for review—Pg. 103-114, incl.

23. Findings of fact and conclusions of law and Order reversing Referec's order—Pg. 115-124, incl.

24. Notice of appeal—Pg. 125.

25. Points on which appellant intends to rely on appeal—Pg. 126-128, incl.

26. Designation of parts of the record on appeal (District Court)—Pg. 129-130, incl.

27. Affidavit of service—Pg. 131.

28. Appellant's supplementary designation of parts of record on appeal—Pg. 132-133.

29. Affidavit of service by mail—Pg. 134.

30. Civil No. 7723-B, Amended complaint to avoid fraudulent conveyance of real property—Pg. 135-142, incl.

Please print the title of this case but omit the title in all subsequent proceedings therein simply setting out "title of court and cause."

31. Answers of defendants to amended complaint action No. 7723-B—Pg. 144-148, incl.
32. Findings of fact and conclusions of law action No. 7723-B—Pg. 149-156, incl.
33. Judgment, No. 7723-WM—Pg. 158-160.
34. Mandate of Court of Appeals, including filing stamp—Pg. 161-162, incl.
35. Certificate of Clerk of United States District Court.
36. This document.

Dated: July 10, 1951.

/s/ THOMAS S. TOBIN,
Attorney for Appellant.

[Endorsed]: Filed July 13, 1951.

